S. HRG. 100-498

COMPACT OF FREE ASSOCIATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S.J. RES. 231

TO AUTHORIZE THE ENTRY INTO FORCE OF THE "COMPACT OF FREE ASSOCIATION" BETWEEN THE UNITED STATES AND THE GOVERNMENT OF PALAU, AND FOR OTHER PURPOSES

JANUARY 28, 1988

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COMPACT OF FREE ASSOCIATION

JANUARY 28, 1988

U.S. SENATE,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The committee met, pursuant to notice, at 10:05 a.m., in room SD-366, Dirksen Senate Office Building, Hon. J. Bennett Johnston, chairman, presiding.

OPENING STATEMENT OF HON. J. BENNETT JOHNSTON, U.S. SENATOR FROM LOUISIANA

The CHAIRMAN. The hearing will come to order. Two months ago the President transmitted to Congress the certification that the Compact of Free Association had been approved, in accordance with the Palau Constitution, and that the United States will be able to carry out its security responsibilities under that Compact.

Today the Committee will receive testimony on the joint resolution to authorize implementation of the Compact. Of particular interest to the Committee are allegations that the Compact was not approved in accordance with Palau's Constitution.

Lawsuits were filed in Palau, challenging the constitutionality of the referendum held last August 4, but these lawsuits were withdrawn. Allegations have been made that at least one of these suits was withdrawn because of intimidation and threats of violence.

It is reported that there are individuals in Palau who continue to wish to file suits challenging the constitutionality of the August 4 referendum, but who are too frightened to do so.

If this is true, then today I would like to get the cooperation of both Palauan and United States officials in reassuring those seeking access to the courts that they will be safe from intimidation.

In order to assist the Committee in resolving these issues, I have invited several witnesses who were involved in these lawsuits. I would like to break with our usual protocol and begin with those witnesses, so that we can then ask more appropriate, and you might say legal questions, of our later witnesses.

[The text of S.J. Res. 231 follows:]

II

100TH CONGRESS
1ST SESSION

S. J. RES. 231

To authorize the entry into force of the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9 (legislative day, DECEMBER 8), 1987

Mr. JOHNSTON (for himself and Mr. MCCLURE) introduced the following joint resolution; which was read twice and referred to the Committee on Energy and Natural Resources

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JOINT RESOLUTION

To authorize the entry into force of the "Compact of Free Association" between the United States and the Government of Palau, and for other purposes.

Whereas the President of the United States has certified that the Compact of Free Association between the United States and Palau has been approved in accordance with section 411 (a) and (b) thereof, as required by section 101(d)(A) of Public Law 99–658; and

Whereas it is the sense of Congress that the President's certification is correct and proper in light of the internationally recognized act of self-determination by which the people of Palau have approved the compact and in view of the notification by the Government of Palau that its internal approval process has been completed: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That entry into force of the Compact of Free Association in accordance with section 101 (a) and (b) of Public Law 99–658 is hereby authorized.

○

SJ 231 IS

The CHAIRMAN. In order to provide sufficient time for questions, I ask that all witnesses be brief in their statements. We will begin this morning, I hope I can pronounce this, with Mrs. Gabriela Ngirmang from Koror, Palau.

I understand that Mrs. Ngirmang was taken ill yesterday. I am glad to hear that she is resting comfortably. And I wish for her a full and speedy recovery. I understand that Ms. Isabella Sumang will deliver her statement this morning. So, Ms. Sumang, you might begin.

Also, the Hon. Santos Olikong, who is the Speaker of the Palau House of Delegates, should also come to the table at the same time. Ms. Sumang, you may begin please.

STATEMENT OF GABRIELA NGIRMANG, KOROR, PALAU, AS PRESENTED BY ISABELLA SUMANG

Ms. ISABELLA SUMANG. Ladies and gentlemen, we are pleased to have the opportunity to come here and we convey our regard and respect to Chairman Johnston and the Committee for the invitation to do so.

I am Isabella Sumang, supposedly to interpret for Gabriela Ngirmang, but she is not here. And with us is Yosiko Ramarui and Rafaela Sumang.

I decided to bring with me these delegations so that we might have a wider perspective on the present situation. In Palau, women play an important role in the issues of policy, as I suspect is the case in Washington as well.

Women traditionally own and devise land. We control the clan money. We traditionally select our chiefs. Women place and remove them. Having observed their upbringing closely, we are able to decide which men have the talent to represent our interests.

From birth, Palauan women are responsible for the men. When the men marry, the women arrange for the settlement. And when the men die, the women bury them.

I came here because the women feel that our interests are not being satisfactorily protected, and out of concern for the Palauan citizens. We feel that those who voted for the Compact do not understand the content of the document.

Those who voted in the favor of the Compact did not and do not understand its meaning or its effect. The Compact is hundreds of pages long, it is written by lawyers, and the political education on the document is biased to support the politician needs of the president of Palau.

Despite much public relations and efforts to sell the Compact, we clearly understand that the implementation of the Compact gives the United States the right to conduct military operations on as much as one-third of our land forever.

We see that the Compact says military rights may end in 50 years if mutually agreed. This means, we understand, that if the United States wished to continue its control of our land, it need only say so, and this will go on forever. This is unacceptable.

A representative of the United States Department of State visited me in my home in Palau when he gave me Senator Johnston's

invitation. One of the questions he asked me was why did I not like the Compact. I told him that 50 years was too long and there is not enough funding for all that time.

Then he asked the question, do you want the years reduced and the money reduced too? Then he asked another question. Do you not want the United States to protect you, to provide you security? Are you not interested in the United States protecting you from another country, such as the Philippines, coming in to attack you?

I told him that during the Second World War, we experienced bombing and attacks on our land. But the attacks were not against the Palauans. The attacks were against the Japanese who had a military presence on our islands.

So you can be sure that the presence of the American military bases would invite the attacks of other countries, not at the Palauans, but at Americans.

I found that the State Department official approached this only from the concern of money, asserting to me repeatedly that if we got fewer years, we would get less money.

This is not the issue. We do not need the money. About the only need I had for the money is to bring this delegation here to ask you not to take our land. Our politicians need the money. We do not.

I have been assured repeatedly that the United States has no present intention of exercising its rights to use our land for military purposes. I am not reassured.

We do not seek options on U.S. land. We assume that if you seek options on Palauan land, you at some point will use them. If they are not important to you, then please remove them from the discussions in the future.

In any event, the Trusteeship Agreement involved the promise that our country would be given roads, docks, hospitals, power, the things we need to live in a dignified way. And 40 years later, we do not have them. So promises with regard to future actions are not as important to us as keeping our land.

Recent efforts to impose the Compact, which no one understands, in violation of our Constitution, led us to file a lawsuit to challenge the constitutionality of the Compact. We believe it is unconstitutional, since 75 percent of our voters must approve a Compact which allows nuclear materials.

Slowly but steadily, after filing the lawsuit, people dropped out, both lawyers and other plaintiffs, as a result of pressure and intimidation by furloughed government employees and traditional leader Ibedul.

We persisted in the lawsuit until a series of violent acts, culminating in the murder of Mr. Bedor Bins on the evening before a public hearing in which our arguments were to be heard, led us to drop the lawsuit.

We feared that we, like Bedor, would be killed and that our families would be hurt. I have been insulted by a variety of recent questions about whether the intimidation was real.

Shots were fired outside Rafaela Sumang's house. That same evening she was visited by a striker who said that if she did not withdraw the lawsuit, worse things would happen to her.

The following night Bedor was murdered. The same night that Bedor was murdered, a firebomb was ignited on my land, blowing

up in the rear of my house sometime between 10:30 and 11:00, after the government turned the power off in all of Palau.

My family and young children were sleeping in the house at the time, and one of my daughters, Ida, suffered injury to her eyes.

The CHAIRMAN. Ms. Sumang, I have read the complete statement. Why do we not at this time go on to the Speaker, hear his statement, and then we will come back with some questions.

[The prepared statement of Ms. Ngirmang follows:]

STATEMENT OF

GABRIELA NGIRMANG

presented to the

SENATE ENERGY COMMITTEE

January 26, 1988

Ladies and Gentlemen:

We are pleased to have the opportunity to come here and we convey our regards and respects to Chairman Johnston and the committee for the invitation to do so.

I am Gabriela Ngirmang and, with me, I am pleased to introduce Isabella Sumang, Yosiko Ramarui, and Rafaela Sumang. I decided to bring with me this delegation so that we might have a wider perspective on the present situation.

In Palau women play an important role in issues of policy, as I suspect is the case in Washington as well. Women traditionally own and devise land. We control the clan money. We traditionally select our chiefs; women place and remove them. Having observed their upbringing closely, we are able to decide which men have the talent to represent our interests. From birth, Palauan women are responsible for the men. When the men marry, the women arrange for the settlement and when the men die, the women bury them.

I came here because the women feel that our interests are not being satisfactorily protected, and out of concern for the Palauan citizens. We feel that those who voted for the Compact do not understand the content of the document. Those who voted in favor of the Compact did not and do not understand its meaning or its effect. The Compact is hundreds of pages long, it is writen by lawyers, and the political education on the document is biased to support the political needs of the president of Palau. Despite much public

relations and efforts to sell the Compact, we clearly understand that the implementation of the Compact gives the United States the right to conduct military operations on as much as one-third of our land -- forever. We see that the Compact says military rights may end in fifty years if mutually agreed. This means, we understand, that if the United States wishes to continue its control of our land, it need only say so and this will go on forever. This is unacceptable.

A representative of the United States Department of State visited me in my home in Palau when he gave me Senator Johnston's invitation. One of the questions he asked me was why didn't I like the Compact. I told him that fifty years was too long and there is not enough funding for all that time. Then he asked the question, "Do you want the years reduced and the money reduced too?" Then he asked another question. "Don't you want the United States to protect you? To provide you security? Aren't you interested in the United States protecting you from another country, such as the Philippines, coming in to attack you?" I told him that during the Second World War we experienced bombings and attacks on our land. But the attacks were not against the Palauans. The attacks were against the Japanese who had a military presence on our islands. So you can be sure that the presence of the American military bases would invite attacks of other countries, not at the Palauans, but at the Americans. I found that the State Department official

approached this only from the concern of money, asserting to me repeatedly that if we got fewer years, we would get less money. This is not the issue. We don't need the money. About the only need I have had for money is to bring this delegation here to ask you not to take our land. Our politicians need the money; we do not. I have been assured repeatedly that the United States has no present intention of exercising its rights to use our land for military purposes. I am not reassured. We do not seek options on U.S. land. We assume that if you seek options on Palauan land, you at some point will use them. If they are not important to you, then please remove them from the discussions in the future. In any event, the Trusteeship Agreement involved the promise that our country would be given roads, docks, hospitals, power -- the things we need to live in a dignified way. And, forty years later, we do not have them. So promises with regard to future actions are not as important to us as keeping our land.

Recent efforts to impose the Compact which no one understands, in violation of our Constitution, led us to file a lawsuit to challenge the constitutionality of the Compact. We believe it is unconstitutional since 75% of our voters must approve a Compact which allows nuclear materials. Slowly but steadily, after filing the lawsuit, people dropped out -- both lawyers and other plaintiffs -- as the result of pressure and intimidation by furloughed government employees,

and traditional leader Ibedul. We persisted in the suit until a series of violent acts, culminating in the murder of Mr. Bedor Bins on the evening before a public hearing in which our arguments were to be heard, led us to drop the lawsuit. We feared that we, like Bedor, would be killed and that our families would be hurt. I have been insulted by a variety of recent questions about whether the intimidation was real. Shots were fired outside Rafaela Sumang's house. That same evening she was visited by a striker who said that if she did not withdraw the lawsuit, worse things would happen to her. The following night Bedor was murdered. The same night that Bedor was murdered, a firebomb was ignited on my land blowing up in the rear of my house sometime between 10:30 and 11:00, after the Government turned the power off in all of Palau. My family and young children were sleeping in the house at the time and one of my daughters, Ida, suffered injury to her eyes. The murder of Bedor, the firebombing of my house, and another act of arson all occurred after the power went out, the evening before the hearing. Please do not insult me with any further questions about whether the intimidation was real or if I imagined it. And I want you to tell me why the people who did this are still at large, because I do not have the power to police.

This Committee has the responsibility to make a recommendation regarding the implementation of the Compact. I do not believe you can vote in favor of implementation now. We

would ask that you not approve the Compact until such time as you can come to Palau to hold hearings, with as many citizens as possible participating.

Palau was independent before the Germans, Spanish, Japanese and Americans came to our lands. Now we live in a trusteeship for which we did not vote, more dependent than when we were without it, and we have never had any choice other than this deal which gives you perpetual military rights in land that is ours. So please do not think that we are grateful for the relationship. If it is your question what would we like for the future, I say that Palau would wish an independent status and that we would accept a relationship with the United States that involved mutual security.

I would be pleased to respond, through my interpreter, to questions you may wish to ask.

Thank you.

The CHAIRMAN. Mr. Speaker, we are pleased to welcome you this morning, and please proceed.

STATEMENT OF HON. SANTOS OLIKONG, SPEAKER, PALAU HOUSE OF DELEGATES

Mr. OLIKONG. Thank you, Mr. Chairman. Mr. Chairman, before I proceed with my summary of my statement, I would like on behalf of the people of Palau and the House of Delegates convey our deepest condolences for the passing of your beloved mother-in-law.

The CHAIRMAN. Thank you very much, Mr. Speaker. I appreciate that.

Mr. OLIKONG. Also, Mr. Chairman, I would like to thank you for your past assistance. Namely, the period in which our committee was working on the war claims, and it was you at one time who pushed through that legislation. And therefore we got the first payment.

And also I would thank you for the help of the remaining balances. Thank you, sir.

The CHAIRMAN. Thank you.

Mr. OLIKONG. I have submitted my statement, Mr. Chairman, so I will briefly touch on the major items in the statement.

Mr. Chairman and distinguished Committee Members, I wish to thank you for inviting me to testify on the Senate Joint Resolution 231, a measure to authorize the entry into force of the Compact of Free Association between the United States and Palau.

In my last Congressional appearance in December of 1987, I urged the Subcommittee on Asian and Pacific Affairs of the House of Representatives and this Congress to consider an early approval of the Compact of Free Association. .

However, such an approval of the Compact by your Congress must rest upon the conclusion that the Compact was duly approved by the people of Palau, in strict compliance with their constitutional processes, and that their choice was freely made and given.

A Congressional approval of the Compact without making such determination will be a great disservice to the people of Palau.

In your letter of invitation, you requested my views regarding S.J. Res. 231, and most specifically my understanding of the reasons why the lawsuits challenging the constitutionality of the Compact approval processes were withdrawn.

In the interests of time, please allow me to briefly summarize my understanding with respect to the withdrawal of the two lawsuits. While the two cases, like any other suit, no matter how unpopular its cause may be, they serve independent judicial wisdom and disposition.

They were withdrawn because of events of harassment, intimidation, arson, power outages believed induced by roaming villains, bombings, shootings, and killings, with law enforcement agency of the government unable to contain the lawlessness.

In such a situation, not only the independent integrity of the judicial branch of the government becomes endangered, but also the right of the individual to bring forth his or her case before the court of law, and therefore the Constitution is damaged.

Anarchy and disorder are bound to spread and become uncontrollable. It is with such a thought in mind that I take the approval of the Compact of Free Association to be somewhat premature.

Foremost among the items in the shopping list that Palau must have in order for it to afford the termination of the Trusteeship Agreement is political stability.

Unless a country, any country, be it in Europe, the British Isles, Southeast Asia, or anywhere in the world, is politically stable, no one can depend on what that country says, and I venture to say no private entrepreneur will want to consider investment in such a country.

Palau today is at the threshold of becoming a separate political entity, fully and internally self-governing, and in free association with the United States. This would be the case if the United States were to give its approval to Senate Joint Resolution 231.

Unfortunately, Palau still lacks as of today a stable and reliable political system to go on its own, and it behooves the United States as an administering authority to provide the necessary stabilizing political force and climate before the present Trusteeship Agreement terminates.

Mr. Chairman, my two colleagues, Chairman of the Foreign Affairs Committee of the House of Delegates, Palau National Congress, Delegate Ortel, and Chairman of the Judiciary and Governmental Affairs, Delegate Anastasio, and myself will be most happy to answer any questions you and your Committee may have. Thank you, sir.

[The prepared statement of Mr. Olikong follows:]

STATEMENT BY SPEAKER SANTOS OLIKONG
BEFORE THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
ON S.J. RESOLUTION 231

JANUARY 26, 1988

Mr. Chairman and Distinguished Committee Members:

I am pleased to be here today and to testify on S.J. Resolution No. 231 to authorize the entry into force of the "Compact of Free Association" between the United States and the Government of Palau.

President Reagan's certification as to the approval of the Compact of Free Association between the United States and Palau relied upon notification by the government of Palau on August 29, 1987, through Palau President Lazarus E. Salii that 73% of the Palau voters in a referendum observed by the United Nations approved the Compact on August 21, 1987. The Compact certification by President Reagan indicated that no legal impediment existed to prevent the United States from carrying out its responsibilities and from exercising its rights under Title Three of the Compact. The notice of Compact approval by Palau sent by President Lazarus E. Salii meant that the people of Palau by their constitutional processes had freely chose self-government in free association with the United States. Based on these representations, your Committee and the United States Congress must now decide whether or not to breathe life into a Compact of Free Association between the United States and Palau.

Mr. Chairman and Distinguished Committee members, I am not here necessarily to urge you for an early implementation of the Compact for Palau, or to recommend to you that the Compact of Free Association for Palau be delayed to some given time in the future. That to me is the prerogative of your Committee and that of the United States Congress.

For my part, I wish to urge and strongly recommend to this Committee and the United States Congress that the goals and objectives we set for ourselves some forty one years ago today remain as true a fix on our destination as when we began. Forty one years ago, when the former Japanese mandated islands were constituted as the Pacific Trust Territory and placed under the United States as the administering authority, the United Nations

directed that the Administering Authority "promote the development of the inhabitants of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances of the Trust Territory and its peoples and the freely expressed wishes of the people concern". The mandate included the international obligation to "promote the economic advancement and self-sufficiency of the inhabitants, ... to promote the social advancement of the inhabitants ... to protect the rights and fundamental freedoms of all elements of the population ..." and to secure to these dependent peoples other fundamental rights and social freedoms.

Emblazoned on the Charter of the United Nations and etched into the Trusteeship Agreement for the former Japanese mandated islands, these goals and objectives, forged at the time when the traumatic damage and dislocation of war had barely passed, and when the United States plans for the Pacific Trust Territory were as vague as the viability of Micronesia as one political entity, there was little urgency in translating such concepts into action programs or treating them as practical instruments of national diplomacy.

All that, however, has changed. The former Japanese mandated islands that were the "Pacific Trust Territory" has whittled down to only the "Palauan islands". Even now, while your Committee and the United States Congress propose to end its suzerainty to the last remaining Trust Territory under the U.N. trusteeship system, the community of nations of the world must reserve its judgment on just how that trusteeship system should be ended by the United States.

I wish, therefore, to confine my remarks to how I see the U.N. trusteeship system should terminate for Palau, and, concomitant with that, the entry into force of the Compact of Free Association between the United States and Palau.

Foremost among the items in the shopping list that Palau should have in order for it to afford the termination of the trusteeship system is political stability. Unless a country--any country, be it in Europe, the British Isles, Southeast Asia, South

America--any where in the world is politically stable,-- no one can depend on what that country says,-- and I venture say--no private entrepreneur will want to consider investment in such a country.

Palau today is at the threshold of becoming a separate political entity fully and internally self-governing and in free association with the United States. This would be the case if the United States Congress were to give its approval to S.J. Resolution 231. Unfortunately, Palau still lacks as of today a stable and reliable political climate to go on its own, and it behooves the United States as an administering authority to provide the necessary stabilizing political force and climate before the present trusteeship system terminates.

The handling of the political and economic crises by our Government in August and September of last year serves as good example. For one thing, there are few countries in the world which would require its citizens/voters to vote on the approval or rejection of a public issue more than five times within a span of little over two years. The usual and normal course of event is that once a plebiscite or a referendum on any given issue has been decided by the majority of the voters, the result of the referendum vote is binding on such a public issue without any further question or attempts to influence or change the election results.

Palau had to be an exception to the holding of referenda. By July of last year, no less than five referenda had been held on the Compact of Free Association between Palau and United States. In each case, the approval of the Compact failed. The proponents of the Compact, therefore, decided to lower the threshold or the percentage of votes required to allow the transit of nuclear capable and propelled vessels and aircraft within the Republic of Palau. The Government of President Salii, which naturally supported the approval of the Compact, decided to support and encourage the passage of a legislative bill introduced in the Palau Congress, calling for the amendment to the Palau Constitution to lower the 75% vote requirement on the nuclear provision of the Compact, and

requiring for yet another referendum on the Compact. RPPL No. 2-30 which became law on July 19, 1987, directed the referendum on the proposed constitutional amendment to take place on August 4, 1987. A subsequent referendum on the Compact was to take place in the event a favorable result of the votes on the Constitutional amendment obtained.

In Merep vs. Salii case which followed, the Plaintiffs challenged the legal validity ac to the enactment of RPPL No. 2-30 on several grounds. First, Article XIV of the Palau Constitution required any proposed constitutional amendments to the Palau Constitution initiated by the Palau National Congress to be instituted by means of a resolution instead of a bill; that any such amendment be approved by 3/4 of the members of each house; and that any such proposed constitutional amendment take effect when approved in the next regular general election by majority of the votes cast on that amendment and in not less than three-fourths of the states. The plaintiffs contended that RPPL No. 2-30 violated these requirements under Article XIV of the Palau Constitution.

Secondly, RPPL No. 2-30 posited as its justification and rationale for enactment an alleged inconsistency between the Palau Constitution (Article II, Section 3 and Article XIII, Section 6) and the Compact of Free Association. The proponent of the Compact claimed that Section 11 of Article XV was being used in the enactment of RPPL No. 2-30 to avoid or eliminate "inconsistency with the Compact". The Plaintiffs contended that, since there was no inconsistency between the Palau Constitution and the Compact, nothing triggered the provisions of Section 6, Article XV of the Palau Constitution to come into operation; the Plaintiff further argued that since the Compact still had to be ratified by the Palau voters it was not then in effect in Palau. Thus, if the Compact was not in effect, it was not possible for the Compact to be "inconsistent" with the Palau Constitution. The Plaintiffs also claimed inadequate opportunity for public education and contended violations of their constitutional, and statutory rights.

Mr. Chairman, I went somewhat extensively into the merits of the Plaintiffs' case to impress upon you and your Committee that the case of M^rep vs. Salii deserved the judicial wisdom and disposition by the Supreme Court of Palau.

Despite this fact, however, events of harrassments, intimidation, arson, power outages believed induced by roaming felons, bombing, shootings and killing--with law enforcement agency of the Government unable to contain the lawlessness and with the incumbent leaders of the Palau National Government sympathizing with and providing material supports to suspected perpetrators to some of these unlawful acts combine to make mockery to any claim that law and order prevailed when the Palau Constitution was amended or when the voting on the Compact of Free Association was being voted upon for the sixth times.

The harassments and intimidation meted out to the poor old ladies who opted to assert their rights in Ngirmang vs. Salii by challenging the constitutional amendment procedure followed pursuant to RPPL No. 2-30 unmistakenly evidenced anarchy and failure of leadership to the very top. Furthermore, when the chief executive, along with his law enforcement officials, openly and publicly derided judicial decisions, and the actions of the Court not favorable to the executive branch of the government, the independence and integrity of the Judicial branch of the Government become in danger. The idea that the court should decide cases unswayed by any other considerations except the merits of the case disappears and the principle of separation of powers of the government and of checks and balances are compromised. Anarchy and disorder are bound to spread and become uncontrollable.

Mr. Chairman, events during the recent past both in the Republic of Palau and in the United States have served to obscure the real needs and requirements of the people and government of Palau. Until the Compact of Free Association between Palau and the United States gets implemented, the trusteeship status of Palau remains and the international obligations of the United States as an

Administering Authority abides. Before the appropriate committees of the United States Congress is a formal request for a supplemental funds for FY 1988 for Palau. It appears to me to be most compelling that United States Congress investigate for itself how Palau is using its financial and other resources to carry out its governmental activities and responsibilities, and whether or not accusations of misfeasance, malfeasance, and maladministration of the affairs of Palau are indeed prevalent, and therefore corrective measures are in order.

Sometime in 1969, when Palau was still a part of the Pacific Trust Territory, the people of the former Japanese mandated islands recognized two inescapable realities: first, the need for Micronesian self-government and the fact of long-standing American interest in this area of the Pacific. The Micronesians sought to seek self-governance for themselves and at the same time to negotiate with the United States a political status of free association that would not end the partnership with the United States but to redefine, renew and improve such a concept of partnership. The status of free association was indissolubly linked to the desire of the people of the Trust Territory for a democratic, representative, and constitutional government. We endorsed such a system, inasmuch as we realized it was essentially an American system.

To many people in Palau who sought partnership with the United States and endorsed the American democratic system, the concept of free association was expected to assure our identity as a people and allow us to live as Palauans. At the same time, the status of free association would afford us the luxury for a newly defined political relationship--one that is "not between 'guardian and ward', but between more nearly 'equal friends'". Perhaps, it is time now to seek the possibility of an alternative status--one that will accede to the military needs of the United States in Palau, one that will accept the risk of treatment as a target area by a hostile power in war, and one that will accept the presence of large numbers of

military personnel--all in exchange for a closer political, economic, and social integration and acculturation with the United States. Such, may just prove to be in the long interest of both the United States and Palau. Our efforts in that direction, even after the full entry into force of the Compact of Free Association, could well vindicate the noble goals and objectives of the United Nations Trusteeship System.

I thank you.

The CHAIRMAN. Thank you very much, Mr. Speaker. Ms. Sumang, in the written statement it is said that "the murder of Mr. Bedor Bins" led the suit to be dropped, the lawsuit. "We feared that we, like Bedor, would be killed, and that our families would be hurt."

The use of such violence is deplorable, and the Committee cannot accept an approval process under which citizens were deprived through violence of their right to access to the court system. It is my expectation that the rights of citizens to bring suit would be restored.

Does your group wish to continue to bring a lawsuit? Do you wish this issue decided by the courts?

Ms. ISABELLA SUMANG. Definitely.

The CHAIRMAN. Now, there is time under the law to bring this suit. Is there not?

Ms. ISABELLA SUMANG. Yes. I think so.

The CHAIRMAN. I mean, the issue has not been decided, nor has the statute of limitations run. The suit still can be brought and decided by the court. Is that correct?

Ms. ISABELLA SUMANG. Yes.

The CHAIRMAN. Now, there have been a number of votes on the Compact. Sixty-two percent were for it in one vote, 73 percent were for it in another vote, and that is when a 75 percent majority was required.

And of course, on August 4th, Palau voted to allow a simple majority for approval, and it is this question, the question of whether a simple majority is permitted, that will be challenged in court. Is that correct?

What is the challenge in court? What do you wish to challenge in court?

Ms. ISABELLA SUMANG. The amendment of the Constitution would take place during a general election.

The CHAIRMAN. The timing of it?

Ms. ISABELLA SUMANG. Yes. And I would reserve that question for Gabriela and our lawyer.

The CHAIRMAN. Fine. I will talk to the lawyer about that.

Do you contend that the elections which were held, we have got two questions here. One, the question of threats and violence and intimidation with respect to the withdrawal of the lawsuit. And you contend that the lawsuit was withdrawn because of those threats and intimidation. Is that correct?

Ms. ISABELLA SUMANG. Yes.

The CHAIRMAN. Now, do you also contend that the votes, that the election was the subject of threats and intimidation?

In other words, did they threaten voters when they went to vote? Or is——

Ms. ISABELLA SUMANG. I will reserve that question to Gabriela and the lawyer.

The CHAIRMAN. Well, now that is not so much a legal question.

Ms. ISABELLA SUMANG. I know, but I do not want to answer that question.

The CHAIRMAN. Say again, please?

Ms. ISABELLA SUMANG. I know, but I have to confer with Gabriela and other people. I am not answering that question.

The CHAIRMAN. Well, of course, you can testify to anything you wish and withhold any answer that you wish before the Committee.

Ms. ISABELLA SUMANG. You may write the questions, and I would take it to them, and they will answer the questions.

The CHAIRMAN. This is not a legal question. It is a question of——

Ms. ISABELLA SUMANG. I know, but I am the interpreter. That is my purpose in coming here. And she was just taken ill, you know. So I cannot be answering all the questions that should be directed at her.

The CHAIRMAN. All right. But so far as you personally know, you are not aware of any threats or intimidations, with respect to the election itself?

Well, let me ask you the question, it is not a legal question. Do you know or do you not know of any threats or intimidations that you know about?

Ms. RAFAELA SUMANG. Mr. Chairman, let me answer.

The CHAIRMAN. I think Ms. Sumang is qualified to answer.

Ms. ISABELLA SUMANG. There was no direct intimidation at the polling places. But there was pressure on the people that was started way before the case.

And, you know, this is the whole series of things, pressuring the people, like saying, if you do not take the Compact, you will not have the money. And the Compact is money on the table and you women who are suing are keeping it from becoming a reality.

So most of the voters were not pressured at the polls by direct physical harm. But they were pressured by circumstances that led to the vote that possibly was not the willing or educated vote.

The CHAIRMAN. All right, let me see if I understand. Your position is that the election itself, the votes, there were no threats of violence or personal intimidation.

Ms. ISABELLA SUMANG. At the polls, yes.

The CHAIRMAN. At the polls, or leading up to the election, except that——

Ms. ISABELLA SUMANG. Circumstances.

The CHAIRMAN. Except that their campaign was based upon the fact——

Ms. ISABELLA SUMANG. Yes, and the campaign was based on one biased, and was not fairly given to the people to rightly have the correct information to be intelligently voting for what they are voting for.

The CHAIRMAN. Their campaign was based upon the fact that if you, the voters, do not approve this, then the benefits under the Compact would be denied to you. Is that correct?

Ms. ISABELLA SUMANG. And the information that was given on the Compact lean to one side of the——

The CHAIRMAN. And what, was the information incorrect?

Ms. ISABELLA SUMANG. It was in favor of the Compact.

The CHAIRMAN. Was the ability of your group to give the correct information, from your point of view, did anyone prevent you from giving your information?

Ms. ISABELLA SUMANG. Yes. There were times that the women were not given opportunity to use the public radio and the television to give the education on the Compact, as they felt should be.

The CHAIRMAN. When was that?

Ms. ISABELLA SUMANG. During the plebiscite, before the August plebiscite. During the days before the plebiscite in August.

The CHAIRMAN. In your view, if there was another vote taken, would the majority of the people of Palau vote against the Compact?

Ms. ISABELLA SUMANG. Say that again?

The CHAIRMAN. Do the people of Palau, in your view, oppose this Compact?

Ms. ISABELLA SUMANG. If they understood well what is in the Compact, then they would do so.

The CHAIRMAN. What do they not understand?

Ms. ISABELLA SUMANG. They do not understand that a third of their land will be used by the military, may be used by the United States military for 50 years or more. They do not understand that.

And they do not understand that, they were told too that it was going to be safe. You know, that nuclear will not be brought in to Palau. And that, basically that is what it is.

The CHAIRMAN. Thank you very much, Ms. Sumang. When are you going to refile your case?

Ms. ISABELLA SUMANG. As soon as the women feel safe and well-protected to go to the courts of Palau.

The CHAIRMAN. Do you think that the government of Palau can assure the safety of the plaintiffs?

Ms. ISABELLA SUMANG. From the past experience, we are not reassured.

The CHAIRMAN. Have you decided that you are going to file the case?

Ms. ISABELLA SUMANG. Definitely, yes.

The CHAIRMAN. Well, now, if you are going to file the case, is the case ready to file now? I mean, if you have declared you are going to do something, it seems that that would be——

Ms. ISABELLA SUMANG. Yes. We will do it when we are ready to do it, and let you know of it.

The CHAIRMAN. Is there anything that we can do to assure the safety of the plaintiffs that would make you feel reassured?

Ms. ISABELLA SUMANG. When we go down to Palau, and then we leave there, there are circumstances there that we can tell we feel safe to go on. And if not we feel we must file the suit.

We may ask an outside protection that will be fair to both sides, both parties. And then we would go on and file the suit.

The CHAIRMAN. Are you asking for that outside protection now?

Ms. ISABELLA SUMANG. Yes.

The CHAIRMAN. And by outside protection, you mean the United States government to come in with some kind of protection?

Ms. ISABELLA SUMANG. Yes. It would be fair.

The CHAIRMAN. I will certainly check into that for you, and see if that is possible to do so.

Ms. ISABELLA SUMANG. I appreciate that very much.

The CHAIRMAN. Because we want you to have the full opportunity to have this matter considered in court, and want you to feel

perfectly safe and be perfectly safe in the exercise of your legal rights.

Ms. ISABELLA SUMANG. Yes, and we feel that if you do so come in and protect us during the case, and if they win the lawsuit, and after the lawsuit what? You know, we have to think of that too.

The CHAIRMAN. Well, all right. Thank you very much, Ms. Sumang. And we will look into that for you.

Ms. ISABELLA SUMANG. Thank you.

The CHAIRMAN. Mr. Speaker, you were not a party to either of the lawsuits challenging the referendum. But would you like to see that issue resolved?

Mr. OLIKONG. Yes, very much so, sir.

The CHAIRMAN. Are there those in Palau who do not want this lawsuit resolved but who simply want to delay implementation of the Compact?

Mr. OLIKONG. Not that I know of. The people that I work with, meaning the Congressional members, would like to see the issue resolved one way or the other.

The CHAIRMAN. Now, President Salii has given assurances that the acts of violence will be prosecuted. By the way, do they have a lead on who committed the acts of violence?

Mr. OLIKONG. Not yet, sir.

The CHAIRMAN. There is no question that those acts of violence were committed, is that correct?

Mr. OLIKONG. There is no question.

The CHAIRMAN. In other words, all of that in the statement that Ms. Sumang raised, you have read that statement?

Mr. OLIKONG. Yes, sir.

The CHAIRMAN. And the acts of violence were correctly described in that?

Mr. OLIKONG. What she says is only a portion of what happened.

The CHAIRMAN. There was more violence than that?

Mr. OLIKONG. Yes, sir.

The CHAIRMAN. Now, do you concur that there was no violence or intimidation with respect to the election itself?

Mr. OLIKONG. In the highways and the areas adjacent to the polling places, no intimidation and violences. But in the neighborhoods, people were visited in their homes and were told that if your wife or children either campaign against or vote for the Compact, you will get it.

The CHAIRMAN. You will what?

Mr. OLIKONG. You will get it.

The CHAIRMAN. What does that mean?

Mr. OLIKONG. Get beaten or get shot, get your house burned down, or anything that they would like to do to you.

The CHAIRMAN. I will have to go vote. I will be back shortly.

[Recess.]

The CHAIRMAN. Mr. Speaker, I think we were in the middle of some questions here. I think you had just testified that in the neighborhoods individual voters were threatened with bodily harm. Is that right?

Mr. OLIKONG. Yes, sir.

The CHAIRMAN. If they did not vote for the Compact.

Mr. OLIKONG. Or go out and campaign against it.

The CHAIRMAN. Have you informed the legal authorities about these threats?

Mr. OLIKONG. The authorities in Palau? Yes. The people who are threatened requested assistance from the police. I do not know whether police personnel were sent to see to it that they would not be harassed anymore.

But I know of one family who had to, like myself, who had to move from their residence because of those threats of violence.

The CHAIRMAN. Now, how many of those kinds of threats took place, to your knowledge?

Mr. OLIKONG. It went on from, during the time of education on the vote for the amendment to the Compact, and after that during the political education and campaign for the August referendum on the Compact of Free Association.

The CHAIRMAN. Now, I am not sure I understood your answer. How many threats, and with respect to which elections did they take place?

Mr. OLIKONG. I know of 12 incidents which——

The CHAIRMAN. Twelve?

Mr. OLIKONG. Yes. Which were reported to me, including a busload of furloughed employees stopping at people's houses and telling their wives and their children, if the husband is not home, to tell the husband that he should watch himself, if he campaigns against the Compact, they will get him.

The CHAIRMAN. And get him meant what?

Mr. OLIKONG. To me it meant anything. That he could be shot at, or beaten, or have his house firebombed by gasoline.

The CHAIRMAN. And at what election did this take place? Was this at the August election?

Mr. OLIKONG. This was during the preparation for the vote on the amendment, and also before the August referendum, on the Compact of Free Association.

The CHAIRMAN. There were 12 incidents altogether. How many of them were in August and how many of them were in the previous election?

Mr. OLIKONG. I do not know. All I could say, it happens during the campaign in education for the amendment of the Constitution and the August referendum. It all happens during that time.

The CHAIRMAN. Well, do you know whether it all happened in the previous election, or whether it all happened in this election, or do you know what happened when?

Mr. OLIKONG. Well, in the previous election to the August 4 referendum, in the prior to August vote on the amendment to the Compact was a June 30 referendum. And there was also violence before that June 30 referendum.

The CHAIRMAN. Before what?

Mr. OLIKONG. Pardon me, sir?

The CHAIRMAN. What did you say?

Mr. OLIKONG. Before the August referendum, and also the vote on the Compact, before that, during that June 30 referendum, which was the fifth referendum, there was also acts of violence.

The CHAIRMAN. All right. You had two votes in August. One on August 4, 1987, the referendum amending the Constitution to provide for the approval by a simple majority.

Mr. OLIKONG. Yes, sir.

The CHAIRMAN. And there was another one on August 21, 1987, a 73 percent vote of approval. And now there was——

Mr. OLIKONG. And before those there was a June 30 referendum.

The CHAIRMAN. There was a February 21 vote, and there was a February 10 vote, and there was a December 2, 1986 vote, and there was a June 30, 1987 vote.

Now you speak of 12 incidents. Do you know when they were? Do you know when these 12 incidents of intimidation with respect to voters took place?

Mr. OLIKONG. I would say they happened during the period of preparation for the vote to amend the Constitution in the August 4 referendum.

The CHAIRMAN. Prior to the August 4 referendum?

Mr. OLIKONG. Yes. Between the period of the vote on the amendment and the August referendum.

The CHAIRMAN. August 4 referendum?

Mr. OLIKONG. Right. All this happened during that time. And after.

The CHAIRMAN. Before and after?

Mr. OLIKONG. Yes, sir.

The CHAIRMAN. Is there a police record of these incidents?

Mr. OLIKONG. I would say this, I would mention only one that is very obvious. Mr. Roman Bedor's father was shot after the August referendum.

The CHAIRMAN. Well, we know about that. That has been testified here. But these are new incidents, a dozen incidents of voter intimidation.

That shooting had to do with the lawsuit, did it not?

Mr. OLIKONG. To answer your question whether the police, whether we have police records, no, I do not have police records on those incidents.

The CHAIRMAN. Was the complaint made to anybody in authority?

Mr. OLIKONG. Well, most of the complaints were not made to the authorities because the people, before July, August, and September, all those incidents that happened before that were reported to the police and nothing was done about them.

The CHAIRMAN. Do you contend that the police were part of a pattern of intimidation? Are you telling us that, or not?

Mr. OLIKONG. Some of the police I would not say were part of it, but there was an incident where two policemen were sent to pick up our public information official.

They were sent by the furloughed employee to pick up our public information official, and the reason was that he has play in the only radio station that releases press releases of the House of Delegates, which the furloughed employee did not want to hear broadcast.

The CHAIRMAN. He did what?

Mr. OLIKONG. We broadcasted, we had a press release to the people telling them to please understand and read and attend the education, political education. And please do not believe what is being broadcast that the House of Delegates is responsible for the money being squandered, and that the furloughed employee——

The CHAIRMAN. What are those last few words you said?

Mr. OLIKONG. The furloughed employee. The employees who were laid off during July.

The CHAIRMAN. All right. Now, you say that which was reported had to do with the furloughing of workers, and the content of the broadcast leading up to it. That is a completely different thing from violence and threats and intimidation.

Were there examples of violence, threats, or intimidation either participated in by the police or witnessed by the police or in which the police or other people in official authority were directly or indirectly associated with?

Mr. OLIKONG. There is one that I know of, but I did not see it first-hand. I was told about it by somebody who heard what the policeman said.

The CHAIRMAN. And what was that?

Mr. OLIKONG. This one man was telling the police that he has beaten one teacher——

The CHAIRMAN. That he has beaten one teacher?

Mr. OLIKONG. Yes, and the teacher has threatened to lodge a complaint against him. And this guy said, so if it comes to the police station, you see to it that it does not go through. And this policeman is supposed to have said, it is in the wastebasket already.

But that is what I heard. I did not hear it first-hand.

The CHAIRMAN. Now, did that person make a complaint?

Mr. OLIKONG. I heard that he was going to make a complaint, but I do not know whether he did or not.

The CHAIRMAN. All right. So, of your own personal knowledge, other than that one hearsay incident, you do not know of any participation by the administration or the police in any incidents of violence or threats of violence. Is that correct?

I am not trying to put words in your mouth, I am trying to understand what it is you are saying.

Mr. OLIKONG. Before I say that, I would like to——

The CHAIRMAN. Can you give me an answer to that, and then explain?

Mr. OLIKONG. Yes. Well, no. I did not witness any violence from the police. But these furloughed people were sponsored by the administration, the executive branch.

And so I do not know how I should answer that, because they were sponsored by the administration. And if they do commit an act of violence, the question is who do we blame? The sponsors or only the people who committed the violent act against the citizens?

The CHAIRMAN. What would you have this Committee do? What do you think we should do?

Mr. OLIKONG. I would ask this Committee to investigate, and maybe the Committee has a very good knowledge of what happens.

What I would like the Committee to do is to help us get our government into the right track. Right now our government is going through the boondocks. It is going through the forest, and we need help to help the government get back to the right track and be operated according to the Constitution and the laws of Palau.

The CHAIRMAN. Are you asking for another election? Are you asking for another Compact? What would you have us do? I mean, how do we get your government back on the track?

Mr. OLIKONG. We want to see our government, our executive branch, to operate according to the laws.

To follow what the language of the unified budget, which means we want the executive branch to spend the money according to and within their share of the budget, instead of going overboard, and turn around and blame the other branch for coming up with a unified budget with high figures.

The CHAIRMAN. Thank you very much, Mr. Speaker and Ms. Sumang. Yes, did you want to say something else?

Ms. ISABELLA SUMANG. What our group wants is that this Committee might have an influence on keeping the Compact from being ratified by the United States Congress until we resolve our internal problems.

The CHAIRMAN. Say it again?

Ms. ISABELLA SUMANG. What our group wants your Committee to work on is to keep the Congress from ratifying the Compact of Free Association until we resolve the internal court process.

The CHAIRMAN. But a suit has not been filed yet.

Ms. ISABELLA SUMANG. I just told you that we definitely would file a lawsuit.

The CHAIRMAN. When will that be done?

Ms. ISABELLA SUMANG. As soon as we get ourselves together and have all the security and the proper, you know, things together. What is the hurry? It is our future.

The CHAIRMAN. What is the delay?

Ms. ISABELLA SUMANG. We have to think about that. It is our future. And we have to move as cautiously as possible, please.

The CHAIRMAN. Well, you see, we want to allow for a legal and fair and proper administration of your government and its elections. And we certainly want the courts to be able to function.

But we cannot just say, well, we will hold it up until and if you ever decide to get around to filing the suit.

Ms. ISABELLA SUMANG. Yes, we understand that. But, as you can see, you know, the internal problems are there, whether you feel it or not. We do feel it. And so we have to be honest with you and get ready.

And all we can say is if you could do something about it, that is all, you know.

The CHAIRMAN. All right. Well, we will, as I say, we will follow up and try to ensure that you feel safe in exercising your legal rights. Because we would like to get this matter into court and decided there in court.

Ms. ISABELLA SUMANG. Yes. Thank you.

The CHAIRMAN. Thank you very much. Next we have the President of the Republic of Palau, the Hon. Lazarus E. Salii.

Mr. President, we want to welcome you here. Please proceed.

83-157 0 - 88 - 2

STATEMENT OF HON. LAZARUS E. SALII, PRESIDENT, REPUBLIC OF PALAU, KOROR, PALAU

Mr. SALII. Thank you very much, Mr. Chairman. I would like to take this opportunity to express my appreciation to you for the opportunity to testify on the question before you. But more importantly to meet personally to express my appreciation for the opportunity to renew my acquaintance with you.

Mr. Chairman, I have a beautifully written statement, which I have submitted to the Committee, along with other documents. And I will not take the time to read it, but to let you have more time to ask questions, and I do this in an attempt to be as helpful to the Committee as I can.

I would like to say a few preliminary things, however. Number one, I am very sad this morning to report that yesterday I paid a visit to Mrs. Gabriela Ngirmang, who was scheduled to testify before you this morning, who was taken ill a few days ago.

I went to visit her because she had through some acquaintances of hers, expressed the concern that this was a foreign city to her, and that she was concerned about how she was going to pay the bill at this hospital.

So I, in spite of our financial situation, I gave her the assurance that the government of Palau will take care of the bill, and not to worry, and try to recover her health as speedily as possible.

Mrs. Ngirmang has testified this morning through her interpreter that she is opposed to the Compact, and she has been a well-known opponent of the Compact. Not so much for the reasons which have been said this morning by the speaker, but it turns out she is advocating independence for the Republic.

I respect that sentiment very much. And if Palau were in a position to become fully independent, I would be the first one to lead the people toward that road. I have been involved in these negotiations from the beginning, and we had to look very hard at independence before we said no, that is not practical for Palau at this point.

But be that as it may, that is advocating a different position from the great majority of our people. I feel it is our obligation as a government, and I personally, to give her all the assistance we can.

I would also like to report that last month the wreckage of a U.S. Navy plane, as well as what appeared to be I.D. tags of a Navy flier were found on one of our islands. We are still awaiting confirmation for this, but it appears that the pilot's name was Louis James Sommers, and that he died in the Battle of Palau in 1944.

This year marks the 44th anniversary of the Battle for Palau. And this discovery has attracted international attention, because it reminds us once again of the painful turmoil that took place at the time, throughout the world.

And in our case, especially in Palau, where over 2,000 U.S. young men, fathers, husbands, and sons, lost their lives in the cause of freedom and democracy.

I think over the years as we have come before you, Mr. Chairman, and before this Congress, seeking assistance as we struggle to establish some semblance of dignity to ourselves and to our islands, and to bring some sort of self-government to our people, with your

assistance, that we sometimes forget, I feel, the basic question that we are living with today.

And that is the question of ending the outmoded Trusteeship system over our people and giving us a chance finally to govern ourselves.

Those young men who lost their lives did not lose their lives uselessly. They established a country, this country, as the greatest champion of freedom throughout the world. They wrote a chapter in our history, which if you had not continued to progress, would have made us slaves, and not even third-class citizens in our own islands.

So before you and before the American people, I want to pay our respects to them and to their relatives who may be living today for making the ultimate sacrifice, and giving me and my people the chance to see freedom and self-government for ourselves.

Mr. Chairman, the world is changing very fast. I observe the surroundings around Palau, and I get to be concerned because freedom and democracy may be threatened in that part of the world once again.

But I am happy to report to you that the great majority of the people of Palau have spoken so many times and they have chosen to remain friends with the United States. And we have agreed to make the necessary sacrifices, along with your country and with your people, to see to it that freedom does not disappear in that part of the world once again.

I will admit, I would be the first to admit that our government today is not the most experience, the most capable government in the world. I can tell you also that we are doing the best we can under the resources that are available to us.

It is rare that a constitutional government, which is so young, is being challenged so early and so severely, instead of being given the necessary assistance to grow and to develop.

We have been begging for help for the last 40 years. And not enough has been given to us, and that is why we do not have the full capability up to now to argue that we should remain under the Trusteeship system, because we are not ready, acknowledge the history of the last 40 years in Palau.

The Compact is the answer. I do not say this personally, even though I agree with the Compact personally, because I had negotiated it. I lost many nights thinking what would be the best for our people. And to this day, no better alternative has come up. Not by the critics in Palau, not by the critics abroad.

I think it is a real valid concern before this Committee and before others in this Congress as to whether the people who claim that they are afraid to file any lawsuit challenging the constitutional amendment are forthright and are being honest with themselves and with you.

When Speaker Olikong testified before the House Foreign Affairs Committee in December he was asked the question, if the government of Palau provided protection to you, would you file a lawsuit, and I believe he answered in the affirmative. But I do not believe he has filed any lawsuit up till now.

It has been five months since the election and they have not filed any lawsuit. I have written to Mrs. Ngirmang assuring her of all

the reasonable protection that we can give to her. Not only before but during the trial and after.

It is very easy for opponents to claim that no matter how much assurance President Salii gives us for protection that we do not feel comfortable. I would not give very serious consideration to that claim.

To Speaker Olikong and to his colleagues who oppose the Compact and claim that they do not want to file a lawsuit because they are afraid, I say that as leaders, as elected leaders of our people, we must be prepared to take some risks.

And I assure you, Mr. Speaker, that the protection you have, which is on a 24-hour basis, will continue and will be increased, if necessary, to assure your protection, if you choose to file the lawsuit. Because I do not want to delay this thing. And I do not want to deny any citizen of Palau the right to go to our courts.

Mr. Chairman, I would be very pleased to answer any questions you may have.

[The prepared statement of President Salii follows:]

STATEMENT OF THE HONORABLE

LAZARUS E. SALII

PRESIDENT OF THE REPUBLIC OF PALAU

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

UNITED STATES SENATE

JANUARY 26, 1988

MR. CHAIRMAN, I HAVE A PREPARED STATEMENT WHICH EXPLAINS IN GREAT DETAIL THE LEGAL AND POLITICAL PROCESS UNDERLYING MY CERTIFICATION ON AUGUST 29, 1987, AS WELL AS MY CONFIRMATION TO YOU TODAY, THAT THE COMPACT HAS BEEN APPROVED BY PALAU AND SHOULD ENTER INTO FORCE AS SOON AS POSSIBLE. I WILL REFER TO THAT STATEMENT AS APPROPRIATE IN MY ORAL TESTIMONY TODAY, BUT WOULD LIKE TO REQUEST THAT THE STATEMENT IN ITS ENTIRETY BE INCLUDED IN THE RECORD OF THIS HEARING.

I ALSO WOULD ASK THAT THE DOCUMENT I HAVE HERE, A NOVEMBER 25, 1987, BACKGROUND PAPER PREPARED BY THE DELEGATION I SENT HERE TO REPRESENT PALAU'S POSITION TO CONGRESS, BE INCLUDED IN THE RECORD OF THIS HEARING. I HOPE YOU AND YOUR STAFF WILL HAVE AN OPPORTUNITY TO READ THE STATEMENT WHICH APPEARS AT TAB A OF THAT PAPER, AS WELL AS THE SEPTEMBER 25 SPEECH MADE BY HIGH CHIEF YUTAKA GIBBONS WHICH APPEARS AT TAB F ALONG WITH MY OWN STATEMENT OF THAT DATE.

FINALLY, AS FAR AS THESE PRELIMINARIES ARE CONCERNED, MY GOVERNMENT'S POSITION ON THE ADMINISTRATION'S PROPOSED AMENDMENT TO SECTION 104(E) OF P.L. 99-658 IS SET FORTH AT PAGES 5-7 OF MY PREPARED STATEMENT, AND IN THE DECEMBER 23, 1987, LETTER ON THIS SUBJECT WHICH I AUTHORIZED MINISTER NGIRAKED TO SUBMIT TO YOU. WHILE I AM OBVIOUSLY PREPARED TO ANSWER QUESTIONS ON THAT PARTICULAR ISSUE, I WOULD LIKE TO REQUEST THAT THE MINISTER'S LETTER -- WHICH I HAVE HERE -- BE INCLUDED IN THE RECORD, AND IF THAT IS ACCEPTED I WILL DEVOTE MY ORAL STATEMENT TO THE MATTER OF COMPACT IMPLEMENTATION.

MR. CHAIRMAN, AT THE OUTSET I WOULD LIKE TO REFLECT FOR A MOMENT ON THE FACT THAT EARLIER THIS MONTH THE LIAISON OFFICER CURRENTLY IN CHARGE OF THE U.S. OFFICE IN PALAU ANNOUNCED THAT THE WRECKAGE OF A U.S. NAVY PLANE, AS WELL WHAT APPEARED TO BE THE I.D. TAGS AND REMAINS OF THE PILOT, HAD BEEN FOUND ON ONE OF OUR ISLANDS. WHILE WE ARE AWAITING CONFIRMATION, IT APPEARS THAT THE PILOT'S NAME WAS LOUIS JAMES SUMERS, AND THAT HE DIED IN THE BATTLE OF PALAU IN 1944.

ALTHOUGH 1988 MARKS THE FORTY-FOURTH ANNIVERSARY OF THE LIBERATION OF PALAU, THE STORY OF THIS DISCOVERY ATTRACTED INTERNATIONAL ATTENTION. I THINK IT REMINDED US IN PALAU, AS WELL AS PEOPLE THROUGHOUT THE WORLD, OF THE HORRIBLE PRICE THAT WAS PAID IN WORLD WAR II TO STOP THOSE WHO THOUGHT THEY COULD DEFEAT FREEDOM AND DEMOCRACY.

IN THE FALL OF 1944, OVER TWO THOUSAND AMERICANS PAID THE PRICE FOR LIBERTY IN PALAU. TO BE EXACT, 2,060 AMERICANS -- SONS, FATHERS AND HUSBANDS -- DIED ON OUR SHORES. ANOTHER 7,939 BRAVE U.S. SOLDIERS SURVIVED THE INVASION, BUT WOULD BEAR SCARS AND ENDURE CRIPPLING DISABILITIES FOR THE REST OF THEIR LIVES.

MR. CHAIRMAN, I WONDER HOW OFTEN, IN THE YEARS THAT REPRESENTATIVES OF OUR ISLANDS HAVE APPEARED BEFORE THIS COMMITTEE TO ASK FOR SUPPORT AND ASSISTANCE FROM YOU AND THE AMERICAN PEOPLE, WE HAVE TAKEN THE TIME TO REMEMBER THOSE WHO

PAID THE PRICE FOR OUR FREEDOM. HOW OFTEN HAVE WE PAID TRIBUTE TO THOSE YOUNG AMERICANS WHO OVERCAME THEIR FEAR AND DID THEIR DUTY FOR THEIR COUNTRY, AND FOR CIVILIZATION, IN SEPTEMBER OF 1944 AT THE BATTLE FOR PALAU?

I DARE SAY NOT OFTEN ENOUGH, AND IT SEEMS SOMEHOW FITTING FOR ME TO STATE TO YOU NOW, ON THIS OCCASION AND IN THE PRESENCE OF ALL THOSE ASSEMBLED IN THIS ROOM, THAT THE PEOPLE OF PALAU AND THEIR ELECTED LEADERS ARE GRATEFUL, IN THE MOST PROFOUND AND SOLEMN SENSE, TO THOSE WHO LIBERATED PALAU AND THE PACIFIC IN 1944. FOR ALTHOUGH INNOCENT PALAUANS ALSO DIED IN THE WAR, AND WE ALSO WERE VICTIMS OF THE STRUGGLE AND THE BRUTALITY OF THOSE BATTLES, WE KNOW THAT OUR PEOPLE WOULD HAVE FACED AN EVEN GREATER AND MORE INTOLERABLE FORM OF SUFFERING HAD THE U.S. AND ITS ALLIES NOT BEEN WILLING TO RESIST TYRANNY. VERY SIMPLY, THE WORLD WHICH WOULD HAVE EXISTED, HAD YOUR NATION NOT DEFEATED THE POLICIES OF UNBRIDLED AGGRESSION AND EXPLOITATION, WOULD PROBABLY HAVE BEEN ONE OF LITERAL SLAVERY FOR THE PEOPLE OF PALAU AND THE REST OF MICRONESIA. THUS, IN ADDITION TO PAYING TRIBUTE TO THOSE WHO GAVE THEIR LIVES, LET US NEVER FORGET WHY IT WAS NECESSARY FOR THEM TO DO SO.

HAVING LIBERATED PALAU IN BATTLE, THE U.S. THEN ACTED WITH THE NOBILITY OF PURPOSE EXPRESSED IN THE ATLANTIC CHARTER AND AGREED THAT OUR ISLANDS WOULD BE ADMINISTERED UNDER THE U.N. TRUSTEESHIP SYSTEM -- THE FUNDAMENTAL OBJECTIVE OF WHICH WAS THE ACHIEVEMENT OF SELF-GOVERNMENT IN ACCORDANCE WITH, AS ARTICLE 6

OF THE TRUSTEESHIP AGREEMENT STATES, THE "FREELY EXPRESSED WISHES OF THE PEOPLES CONCERNED."

THE BURDEN OF MY MESSAGE TO YOU TODAY IS THAT THE INTERESTS OF THE UNITED STATES AND PALAU WILL NOT BE SERVED BY ANY FURTHER DELAY IN IMPLEMENTATION OF THE COMPACT AND TERMINATION OF THE TRUSTEESHIP. THE OBJECTIVES OF THE TRUSTEESHIP HAVE BEEN FULFILLED, THE WILL OF THE PEOPLE HAS BEEN RESOUNDINGLY EXPRESSED. THE CONSTITUTION OF PALAU PROVIDES THE FRAMEWORK FOR THE PEOPLE OF PALAU AND THEIR ELECTED LEADERS TO PURSUE THE OPPORTUNITIES AND ADDRESS THE PROBLEMS WHICH EXIST AS WE BELATEDLY MAKE THE TRANSITION TO REAL SELF-GOVERNMENT.

LIKEWISE, THE COMPACT OF FREE ASSOCIATION PROVIDES THE FRAMEWORK FOR PALAU AND THE U.S. TO CONTINUE, BUT MORE IMPORTANTLY TO STRENGTHEN, THE CULTURAL, POLITICAL, ECONOMIC AND STRATEGIC BONDS THAT HAVE BEEN ESTABLISHED DURING THE TRUSTEESHIP. THOSE WHO VIEW THE COMPACT AS A DILUTION OR WEAKENING OF THE RELATIONSHIP BETWEEN OUR PEOPLES AND GOVERNMENTS ARE SIMPLY WRONG -- OR VICTIMS OF THEIR OWN WISHFUL THINKING. TO THE CONTRARY, THE COMPACT WILL ALLOW PALAU -- OF ITS OWN CHOICE -- TO BE THE VOLUNTARY, SELF-GOVERNING PARTNER OF THE UNITED STATES -- WHICH WE HAVE NOT BEEN AND CAN NOT BE UNDER THE ANACHRONISTIC TRUSTEESHIP AGREEMENT. WE INTEND FOR FREE ASSOCIATION TO BE A STRONGER AND MORE PRODUCTIVE RELATIONSHIP THAN TRUSTEESHIP COULD EVER BE. THIS, MORE THAN THE FISCAL AND POLITICAL ISSUES THAT TEND TO PRE-OCCUPY US, IS WHAT THE COMPACT IS ALL ABOUT.

YET, AT THIS LATE STAGE IN THE PROCESS WE ARE HEARING VOICES CALLING UPON YOU TO BRING THE POLITICAL STATUS PROCESS TO A GRINDING HALT. THOUGH THEY DO NOT SAY IT IN SO MANY WORDS, APPARENTLY THESE ADVOCATES OF CONTINUED TRUSTEESHIP BELIEVE THAT CERTAIN OF THE LEGAL, ECONOMIC AND POLITICAL PROBLEMS WE FACE CAN NOT BE ADDRESSED ADEQUATELY BY A SELF-GOVERNING PALAU. THIS PATERNALISTIC NOTION IS DEMEANING NOT ONLY TO PALAU, BUT IT CONTRADICTS AND THREATENS THE CREDIBILITY OF THE LAST TEN YEARS OF U.S. POLICY WITH RESPECT TO TERMINATION OF THE TRUSTEESHIP ON THE BASIS OF ARRANGEMENTS NEGOTIATED WITH AND APPROVED BY THE CONSTITUTIONAL GOVERNMENTS RECOGNIZED UNDER U.S. LAW SINCE 1979. THE U.S. CAN NOT TREAT OUR GOVERNMENT AS SOUND AND LEGITIMATE FOR PURPOSES OF NEGOTIATING THE COMPACT AND MAKING FIFTY YEAR OBLIGATIONS ON THE ONE HAND, AND ATTEMPT TO PRE-JUDGE OR MICRO-MANAGE OUR INTERNAL POLITICAL AND LEGAL PROCESS ON THE OTHER. I KNOW YOU UNDERSTAND THIS BECAUSE THIS COMMITTEE HAS CONSISTENTLY ACTED TO PROMOTE REAL SELF-GOVERNMENT OVER THE YEARS, AND YOU HAVE NEVER MISLEAD AS TO YOUR INTENTIONS AND EXPECTATIONS. THUS, MY COMMENTS ARE AIMED AT THOSE WHO ARE TODAY STILL QUESTIONING PALAU'S CAPACITY FOR SELF-GOVERNMENT.

MR. CHAIRMAN, ALTHOUGH PALAU'S CONSTITUTIONAL GOVERNMENT HAS BEEN FUNCTIONING WITH INCREASED AUTONOMY AND STEADILY IMPROVED PERFORMANCE FOR TEN YEARS, THOSE WHO NOW SEEK TO TRIVIALIZE AND OBSTRUCT THE POLITICAL STATUS PROCESS ARE PAINTING A PICTURE OF WORSENING CONDITIONS IN PALAU. THIS IS SIMPLY NOT TRUE. INDEED,

AS THE DEGREE OF SELF-GOVERNMENT HAS INCREASED OVER THE LAST TEN YEARS, POLITICAL AND LEGAL ACCOUNTABILITY HAS INCREASED AND DISRUPTIONS OF ORDERLY POLITICAL PROCESS HAVE DECREASED. YET, IN THE FACE OF ISOLATED CRIMES AND THE ALWAYS PRESENT POTENTIAL FOR LEGAL ACTIONS, THE CURRENT STATE OF PALAUAN LAW UPON WHICH OUR POLICIES AND ACTIONS ARE BASED IS BEING LARGELY IGNORED AND CONCLUSIONS ARE BEING DRAWN WITHOUT REGARD TO THE LEGAL AND POLITICAL PROCESS IN PALAU.

AS PRESIDENT OF PALAU, I WILL NOT ALLOW THOSE WHO WOULD SET ASIDE OUR CONSTITUTIONAL PROCESS IN THE NAME OF PROTECTING IT DIVERT ME FROM MY DUTY AND THE ACHIEVEMENT OF MY GOVERNMENT'S GOALS. FOR EXAMPLE, MY GOVERNMENT WAS PUT UNDER PRESSURE TO ARREST SOMEONE, ANYONE, TO AVOID ALLEGATIONS OF COMPLICITY IN THE VIOLENCE WHICH OCCURRED IN SEPTEMBER. HOWEVER, WE RESISTED THAT PRESSURE AND HANDLED THE CRIMES IN ACCORDANCE WITH OUR ESTABLISHED PROCEDURES AND PRACTICES IN SIMILAR CASES IN THE PAST -- INCLUDING PRESIDENT REMELIIK'S MURDER. SOME HAVE FOUND FAULT IN OUR CRIMINAL PROSECUTIONS, INDEED AN APPELLATE PANEL REVERSED THE CONVICTION OF PRESIDENT REMELIIK'S ASSASSINS DUE TO ALLEGED DEFICIENCIES IN THE WORK OF THE FBI AND OUR ATTORNEY GENERAL'S OFFICE. HOWEVER, WE ARE DOING OUR BEST WITH THE RESOURCES AVAILABLE, INCLUDING VALUABLE ASSISTANCE FROM THE DEPARTMENT OF INTERIOR AND THE FBI, TO BRING THOSE WHO HAVE COMMITTED POLITICAL VIOLENCE TO JUSTICE.

LIKEWISE, WITHIN REASON WE ARE PROVIDING POLICE PROTECTION TO ANYONE WHO REQUESTS IT, AND WE WILL PROTECT THE RIGHT OF ANY CITIZEN TO BRING A LEGAL ACTION IN OUR COURTS CHALLENGING THE COMPACT. BUT LET US BE CANDID, THE THREAT OF VIOLENCE DOES NOT EXPLAIN WHY NO SUIT CHALLENGING THE COMPACT HAS BEEN FILED. RATHER, WE EXPECT A LEGAL CHALLENGE, IF ONE IS TO COME, TO BE FILED AT A TIME CONSISTENT WITH THE PURPOSE OF DELAYING COMPACT IMPLEMENTATION. THE COMPACT OPPOSITION, COUNSELED BY OUTSIDE ADVISORS, KNOW THAT PALAU'S FUNDING CRISIS WILL ARISE AGAIN EARLY THIS SPRING AND THAT THE TRUSTEESHIP COUNCIL WILL MEET IN MAY -- AT WHICH TIME THE QUESTION OF PALAU'S STILL UNRESOLVED STATUS WILL BE TAKEN UP AND U.S. POLICY ON TERMINATION OF THE TRUSTEESHIP FOR THE CNMI, FSM AND THE MARSHALLS MAY WELL BE CHALLENGED. THE GOAL OF THE ADVOCATES OF DELAY IN PALAU AND HERE IS TO MAKE GREAT MISCHIEF AT THE EXPENSE OF THE U.S., PALAU AND THE OTHER FREELY ASSOCIATED STATES BY DELAYING TERMINATION OF THE TRUSTEESHIP AND COMPACT IMPLEMENTATION UNTIL 1989.

AS TO THE MERITS OF THE LEGAL CHALLENGES WHICH WE MAY FACE AS WE GO FORWARD TO IMPLEMENT THE COMPACT, AS POINTED OUT AT PAGES 10 THROUGH 13 OF MY PREPARED STATEMENT, THE PLAINTIFFS TWICE SOUGHT PRELIMINARY INJUNCTIONS TO STOP THE VOTE TO AMEND THE CONSTITUTION AND THE VOTE ON THE COMPACT UNDER THE APPROVED AMENDMENT. AFTER THE GOVERNMENT PREVAILED IN THOSE COURT ACTIONS, THE POLICIES OF MY ADMINISTRATION WERE ENDORSED BY THE NATIONAL CONGRESS, BOTH HOUSES OF WHICH ADOPTED RESOLUTIONS APPROVING THE COMPACT AND RECOGNIZING THE VALIDITY OF THE

APPROVAL PROCESS. WE WERE NOT, AND WE ARE NOT, AFRAID TO LITIGATE THESE CHALLENGES IN COURT. HOWEVER, AS EXPLAINED AT TAB A OF OUR NOVEMBER 25 BACKGROUND PAPER, AND IN MY PREPARED STATEMENT, THE DECISION TO SETTLE THE CASES WAS BASED ON THE NEED AND OPPORTUNITY FOR NATIONAL RECONCILIATION THAT PRESENTED ITSELF TO GOVERNMENT AND OPPOSITION LEADERS IN LIGHT OF THE VOTING RESULTS OF AUGUST. WE SIMPLY COULD NOT TURN AWAY FROM A LITIGATION SETTLEMENT OFFER OF GREAT POLITICAL SIGNIFICANCE IN ORDER TO PROVE A LEGAL POINT OR GET AN ADVISORY OPINION FROM THE COURT AFTER THE PARTIES HAVE ENDED THEIR DISPUTE.

IT IS IN THIS CONTEXT THAT WE ALL MUST EVALUATE THE ARGUMENTS IN FAVOR OF DELAY. WHERE WERE THESE ADVOCATES OF DELAY, WHO CLAIM TO BE SO DEDICATED TO PALAU'S WELL-BEING, WHEN THE REAL SCANDAL IN PALAU WAS THE WASTE AND INEFFICIENCY OF THE TRUST TERRITORY GOVERNMENT, DURING THE PUBLIC WORKER STRIKE AND RIOTS OF 1981, THE BOMBING OF PRESIDENT REMELIIK'S OFFICE, THE SCANDAL OVER OUR HOSPITAL, OUR DEEP FRUSTRATION OVER LACK OF CONTROL BY PALAUANS OVER EITHER OUR DESTINY OR OUR DAILY LIVES, AND -- MOST TRAGIC OF ALL -- THE ASSASSINATION OF OUR BELOVED FIRST PRESIDENT?

IT WAS NOT THE HIGH COMMISSIONER OR THE DEPARTMENT OF INTERIOR WHO SOLVED THOSE PROBLEMS. IT WAS NOT THE FBI OR THE JUSTICE DEPARTMENT THAT SAW US THROUGH EACH CRISIS. CERTAINLY, THOSE AGENCIES GAVE SUCH ASSISTANCE AS THEY COULD AND IT WAS ALWAYS APPRECIATED. IN ADDITION, WE HAVE ALWAYS HAD THE BENEFIT

OF THE UNSELFISH SUPPORT AND GUIDANCE OF THIS COMMITTEE AND OTHERS IN CONGRESS. LET ME ADD THAT WE KNOW THAT YOU DO NOT BENEFIT POLITICALLY FROM THE TIME YOU SPEND HELPING US, AND THAT YOU DO IT BECAUSE YOU ARE DEDICATED AND RESPONSIBLE LEADERS.

BUT IT WAS NOT EVEN THIS COMMITTEE THAT BROUGHT PALAU THROUGH THE WORST OF TIMES. IT WAS OUR PEOPLE AND THEIR ELECTED LEADERS, BARGAINING WITH THE LITTLE WE HAD AND LOBBYING FOR ALL THE ASSISTANCE WE COULD GET, WHO HAVE FACED THE REALITIES OF LIFE IN PALAU. RARELY HAS A NEW CONSTITUTIONAL GOVERNMENT BEEN CHALLENGED SO EARLY AND SO SEVERELY, AND WE DO NOT EXPECT THAT THE CHALLENGES ARE OVER. BUT THE NOTION OF DELAYING SELF-GOVERNMENT SO THAT CHALLENGES CAN BE PERFECTED, SO THAT PALAU'S FISCAL CRISIS RECURS, SO THE SOVIETS CAN ATTEMPT TO INTERFERE WITH U.S. POLICY IN THE U.N., SO THAT CRITICS OF THE DEPARTMENT OF INTERIOR'S HANDLING OF PALAU CAN VINDICATE THEMSELVES, OR FOR ANY OTHER REASON, IS CYNICAL, UNCONSCIONABLE AND DANGEROUS.

MR. CHAIRMAN, YOU AND THE STAFF OF THIS COMMITTEE HAVE THE HISTORICAL PERSPECTIVE TO KNOW THAT THOSE WHO ARE TRYING TO GENERATE HYSTERIA OVER PALAU'S COMPACT APPROVAL PROCESS ARE NOT BEING FAIR OR ACCURATE. IN SOME CASES, THEY ARE THE SAME ONES WHO ARGUED THAT THE FSM AND THE MARSHALL ISLANDS WOULD COLLAPSE INTO CHAOS IF THE TRUSTEESHIP WAS ENDED IN 1986. THERE WERE PREDICTIONS THAT CORRUPTION, INCOMPETENCE AND ABUSE WOULD RENDER FREE ASSOCIATION UNWORKABLE. THE FIRST YEAR OF FREE ASSOCIATION FOR THOSE NEW NATIONS HAS PROVEN THE CRITICS WRONG.

AS MY PREPARED STATEMENT MAKES CLEAR, WE BELIEVE IN THE INTEGRITY OF THE COMPACT APPROVAL PROCESS, DESPITE THE DISTORTED VERSION OF THAT PROCESS BEING TOUTED BY SOME. I ALSO STAND ON MY PERSONAL RECORD AS WELL. CONTRARY TO WHAT SOME ARE SAYING, I AM FULLY ACCOUNTABLE POLITICALLY AND LEGALLY FOR MY ACTIONS, AS IS EVERY MEMBER OF MY ADMINISTRATION.

THERE ARE ACCUSATIONS, RUMORS AND THREATS BEING PASSED ALONG. I HOPE THE AUTHORS OF THESE ALLEGATIONS WILL COME OUT FROM THE SHADOWS AND ALLOW US TO RESPOND IN PUBLIC. FOR THE RECORD, LET ME SAY AGAIN THAT THOSE WHO HAVE COMMITTED POLITICAL VIOLENCE WILL BE BROUGHT TO JUSTICE. FOR WE KNOW THAT WHERE, AS IN THE CASE OF PRESIDENT REMELIIK'S ASSASSINS, THE EVIL-DOERS EVADE JUSTICE, THERE IS LITTLE CONSOLATION FOR US IN THIS LIFE IN KNOWING THAT THEY WILL BE BROUGHT TO JUSTICE ON THEIR DAY OF RECKONING WITH THE ALMIGHTY.

IN CLOSING, I WANT TO NOTE AGAIN THAT THE DISCOVERY OF ONE OF YOUR FALLEN WARRIORS REMINDS US, AS DOES THE SENSELESS DEATH OF MR. BEDOR AND EVERY OTHER ACT OF VIOLENCE WE READ ABOUT, BE IT IN PALAU, GUAM, THE NORTHERN MARIANA ISLANDS, THE FSM OR THE MARSHALLS, THAT ANY VIOLENCE IS TOO MUCH VIOLENCE, AND ANY UNDUE DELAY IS TOO MUCH DELAY, FOR THE PEOPLES OF THESE ISLANDS IN SEEKING SELF-DETERMINATION, SOCIAL ADVANCEMENT AND PEACE. WE LOOK AROUND THE WORLD TODAY AND SEE PEOPLE BEING SHOT AT THE POLLS, BOYCOTTING MEANINGLESS ELECTIONS AND SPIRALING INTO

POLITICAL TURMOIL, AND WE GIVE THANKS THAT UNDER OUR CONSTITUTION THIS HAS NOT, AND WILL NOT, HAPPEN IN PALAU. WE HAVE PREVENTED THE TENSION AND POLITICAL STRUGGLES WE HAVE BEEN HAVING FROM DEGENERATING INTO A GENERAL BREAKDOWN OF ORDERLY DEMOCRATIC PROCESS OR LAW AND ORDER. ALTHOUGH WE ARE OUTRAGED AND APPALLED BY THE VIOLENCE WHICH DID OCCUR, GIVEN THE ADVERSITIES WE HAVE FACED WE ARE -- ON BALANCE -- PROUD OF OUR PEOPLE AND THEIR GOVERNMENT.

THE DESTRUCTIVE AND OFTEN DEADLY LABOR VIOLENCE WHICH OCCURS IN THE U.S. FROM TIME-TO-TIME SHOWS WHAT CAN HAPPEN WHEN PAYCHECKS STOP COMING EVERY TWO WEEKS. IN PALAU, WE HANDLED THAT SITUATION BETTER THAN MANY EXPECTED. INSTEAD OF CITING THE VIOLENCE WHICH DID OCCUR AS A REASON TO DELAY THE COMPACT, I SHOULD THINK THE PREVENTION OF FURTHER VIOLENCE AND LITIGATION THROUGH A POLITICAL SOLUTION SHOULD LEAD TO RECOGNITION OF THE STABILITY AND VIABILITY OF OUR SYSTEM.

MR. CHAIRMAN, I AM STATING TO YOU TODAY THAT THERE IS NO CHARGE, NO ACCUSATION, NO CRIME, NO ABUSE THAT HAS BEEN ALLEGED OR RUMORED THAT CAN NOT BE HANDLED IN A JUST AND FAIR MANNER BY THE GOVERNMENT OF PALAU WITHIN THE FRAMEWORK OF THE CONSTITUTION AND THE COMPACT OF FREE ASSOCIATION. THERE IS GREATER LEGAL AND POLITICAL ACCOUNTABILITY IN PALAU TODAY THAN THERE HAS EVER BEEN, AND THE BEST WAY TO PROMOTE FURTHER PROGRESS AND ACCOUNTABILITY IS TO END THE TRUSTEESHIP SO THAT OUR CONSTITUTIONAL SYSTEM AND THE COMPACT CAN WORK AS INTENDED.

Statement of Lazarus E. Salii
President of the Republic of Palau
Before the
Committee on Energy and Natural Resources
Senate
United States Congress

January 26, 1988

This is an historic moment. We are about to complete a process whereby the people of Palau, through an act of self-determination, will obtain self-government and end 400 years of foreign domination. The people of Palau realize the momentous character of this occasion and realize as well that it has been obtained only with great difficulty. It has been the unity of the people of Palau, the firmness and strong will they have exercised, and their singularity of purpose that permits us to be here today. I am, therefore, very proud to appear before you as their elected leader to advise you that the Palauan people, by a vote of 73.07 percent, have approved the Compact of Free Association and have evidenced their desire to enter into the Compact of Free Association with the United States. That vote was observed by United Nations observers who agreed that it was an act of self-determination and that it reflects the free expression of the people of Palau.

I can advise you as well that both Houses of the OEK, our Legislature, where there has long been opposition to the Compact, unanimously passed a resolution, after this vote was taken supporting the Constitutional Amendment under which the vote was taken and the Compact vote itself.

To begin to accomplish this vision we need our freedom and our sovereignty. We need control over our land which we believe is very beautiful and, fortunately, is blessed with considerable mineral resources. We need control over our governmental institutions.

We believe this Compact of Free Association gives us that control. It permits us to carry out that vision. The Compact restores sovereignty to our people. It gives us control over our own institutions. It recognizes our ownership of our land; it recognizes our dignity as a people, and it provides ample means with which to improve the standard of living of our people.

Relations With the United States

The Compact also provides for continued association and friendship between Palau and the United States. This unique political relationship is valuable to Palau because in the past 40 years we have come to respect and admire your great nation and the principles of individual freedom and democracy for which it stands.

For over 40 years the people of Palau have been held in a colonial status. It is not one we have enjoyed. It is not one, Mr. Chairman, I think the United States enjoyed either. The negotiation of a Compact of Free Association, a status quite unique in the United States historical experience, represents the product and effort of the people of Palau and the people of the United States to end this colonial association.

We understand that initially, after World War II, our country, like the rest of Micronesia, was seen solely in military terms.

Further, the Ibedul, the high traditional leader, and the recognized representative of the opposition both in Palau and internationally, entered into a memorandum agreement with me in connection with the settlement of the lawsuit, Merep v. Salii and has since addressed the people of Palau a number of times asking their support of the Compact. He indicated we should now lay aside our differences and proceed to utilize our energies for the development of Palau. So, Mr. Chairman, I can say we now come unified before you and are prepared to put the Compact of Free Association into effect.

Let me say a few words on behalf of the people of Palau in relationship to this Compact and to the United States so you can understand our feelings at this time. I want to present

to you our vision of what is happening and what may happen in the future.

The Vision of the People of Palau

Palau as a people traditionally has seen itself as independent people capable of creating an entire world where, as a people, one can achieve, can grow and gain contentment. Our early myths reflect this vision of the Palauan world.

We are more sophisticated now. We know, perhaps more than our ancestors, our limitations and that our world is only one of many worlds. But it is still our vision. It is still our belief that within Palau our people can together build a place where we can work, where our people can develop to the fullest their potential, where we can show we care for one another, and where we can take advantage of the natural beauty of our islands.

But we believe that during the last 40 years, especially during the last 20, as we negotiated and prepared for Free Associated State status, the relationship changed. We became not only a piece of geography related to the national security of the United States but a people whom you got to know and whose goals you cared about. We were, and are, very grateful for that.

We got to know you as well. In our association with the United States, in the past two decades especially, Palauans have come to respect and have, in fact, adopted the same ideals and principles Americans hold for individual freedom, political stability, economic opportunity and a healthy environment. These are reflected in our constitution and the democratic system of government we have established for ourselves.

As we stated at the beginning of negotiations with your government, whatever evaluation we make of the American administration in Palau, we feel that one contribution has been indelible, one achievement unqualified. We have in Palau a firmly established constitutional government that is fully capable of carrying out its responsibilities under the Compact and is equipped to meet the challenges and promises inherent in this document. The people of Palau are proud of that accomplishment but, Mr. Chairman, the people of the United States should also be proud of that accomplishment for your help and willingness to assist in the development of these local institutions of government has permitted that democracy to be achieved.

We are pleased to contribute to the security of the United States and to our own security under the Compact because we are aware we share the benefits of that security. We value our relationship with you. To bring that relationship to its final culmination

requires the termination of colonialism, the end of the Trusteeship and the entering into force of this Compact of Free Association.

We, therefore, are very pleased that the Administration has certified to you that the Compact of Free Association between the United States and Palau has been approved in accordance with Section 411(a) and (b) thereof, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its rights under Title Three of the Compact. I can reaffirm this.

In addition, we concluded agreements last month on fiscal procedures and law enforcement which satisfy the requirements of Section 102 of P.L. 99-239.

We are very pleased as well that this Committee and you, Mr. Chairman, have decided to so promptly hold hearings so the Congress can enact the joint resolution to implement the Compact.

Reaction to the President's Transmittal Message

The President's message and the appended Joint Resolution suggest two amendments to Section 104(e) of P.L. 99-658. First, it would add language to the first sentence of this subsection, stating that money payable by the United States to Palau shall be paid to Palau in accordance with procedures provided by the Compact and its related agreements.

We have negotiated a Fiscal Procedures Agreement with the Administration so these procedures are now in place. This proposed change of the first part of 104(e) consent principle of the fiscal procedures agreement and we fully support.

The second proposed change would repeal the last sentence of Section 104(e). Section 104(e), if changed as proposed, would provide that the Government of Palau may be sued in U.S. courts and also in Palau courts, whereas the U.G. government can only be sued in the U.S. courts. The proposed repeal relates to a power plant sold to Palau by a company, IPSECO, now bankrupt. Various banks, to help the British Government and IPSECO make the sale, guaranteed the financing of this project. There is considerable question about the validity of the original contract and repreeentations made to Palau on the basis of which Palau signed the contract. Litigation is now pending in New York on the matter. We have tried to settle the matter, offering quite generous terms without receiving any counteroffers in return. We believe the banks are seeking this amendment to influence the court case, to have Congress suggest what the equities in this case are.

We do not believe the suggestion that what happens in Palau in this case is likely to affect other much larger, broader negotiations

throughout the Third World. The British Government may say that and the banks may argue that, but they do not believe it. We do not believe it.

In addition, there is a fairness question to any amendment of this kind. As you know, Mr. Chairman, many people in Palau were suggesting we also negotiate further and change various provisions of the Compact or the governing legislation. We were told by key Congressmen directly, who came to Palau for that express purpose, not to even try to amend the deal. On the basis of these Congressional representations, we told our people that no amendment was possible. We believe the United States, like Palau, should not change the deal.

For these reasons, we must oppose this suggested amendment.

I am, therefore, most pleased to see that the resolution as introduced in the Senate and being considered by this Committee does not include the Administration's proposed changes in that regard.

The Events of August and September 1987

We are aware, Mr. Chairman, how long and difficult the road has been to accomplish our self-government. We measure this

Compact and its achievement in relationship to 400 years; and then, if we wish to talk within our own lifetime, we measure it within the last 40 years of U.S. rule and the last 20 years during which we have actively negotiated this Compact of Free Association with the United States. That is our perspective. We appreciate that others, outside Palau who oppose the Compact, have a much shorter time frame. They see one incident, one case, one issue and try to seize upon that, sometimes with the best of intentions, sometimes with baser motives, to undercut and divert the will of the people of Palau and to maintain a colonial system between the United States and Palau despite the desires of the Palauan people. We cannot believe that is the wish of the people of the United States or of this Congress.

I know the Congress has been particularly concerned with the fact that there has been considerable litigation in Palau with respect to the validity of the Compact and that this litigation has brought violence to our society. I know that these events have engendered much discussion outside Palau demeaning both our system of law and order and our credibility as a government. They have overwhelmed certain basic facts which I wish to reiterate although most members of this Committee understand them very well.

Let me say that I, as President of Palau, on behalf of the government and the people of Palau, am proud of our governmental

institutions and our democracy.

We are a proud, capable, competitive people. That is our history and our present situation. It is our strength. As a result of that strength, we have had struggles in the past and have them in the present. These struggles frequently come out in litigation.

Some have charged that our courts are not active, are not independent, or that our community does not have access to these courts. There is no basis for these charges. Even a cursory review of the litigation in the Federated States of Micronesia, the Marshalls and Palau indicates this. There are many more reported cases in Palau than in the Federated States of Micronesia or the Marshalls or the Marianas, combined, although these areas are much larger and less homogenous. No one has suggested that our judges have decided these cases unfairly or were biased. The Compact litigation alone indicates the accessibility of our courts to our citizens and the independence of our courts.

I don't mean to address this in the abstract, however, but I did want to place my views in the appropriate governmental context. I wish to address directly the issue in connection with the Compact litigation and the events of late August and September.

Let me say my government deplores the violence that took place on that occasion and does not support or condone in any

way intimidation of public officials or individuals in the exercise of their human rights. My record as President strongly indicates my personal stand in favor of respect for the law. We have arrested, and will bring to justice, those who are accused of this violence.

On the other hand, those who would use this one outburst, expanding upon it and suggesting that more was involved than an unfortunate outburst during a time of great stress at the end of a long holiday weekend when there was excessive drinking, are doing the people of Palau and its governmental institutions a great disservice.

Let me review the ratification process of the Compact so you will understand why I say this. Beginning in August 1982, the Palauan people voted on the Compact five times. In each case more than 62 percent of the people voted in favor; in some cases, more than 72 percent. All of these votes were under U.N. observation. There has been no suggestion of impropriety, no suggestion of intimidation, in any of these votes.

Our Constitution requires that any agreement involving the use, transit, storage or disposal of nuclear materials obtain 75 percent of the agreement of the people of Palau. Because of that provision, and the changing language of the Compact in that area, there has been considerable litigation over the ballot wording and the ratification procedure. In none of these cases--most of which the courts decided against the proponents of the

Compact and, therefore, against the Government of Palau--was there any suggestion of impropriety or of intimidation.

We then sought to amend our Constitution. What can be more democratic than that? The OEK passed a law presenting the Constitutional Amendment to the people of Palau for ratification. The law was debated--there are minutes of those debates-and the law passed.

Again, this action was challenged in the courts in the case of Merep v. Salii alleging that the Constitutional Amendment could only be adopted pursuant to Article XIV rather than Article XV and, therefore, could only be voted upon in the general election a year and a half later. (The procedure to pass the Constitutional Amendment is the same whether it is under Article XIV or XV. Only the timing is different.) A hearing was held; briefs were filed; the preliminary injunction was denied by the Palau Supreme Court. The vote took place. The Constitutional Amendment passed overwhelmingly: 14 of the 16 States voting their approval. (Twelve are required.) Over 73 percent of the people voted in favor of the Constitutional Amendment.

Then we were to vote a sixth time on the Compact. Again the plaintiff in Merep sought a preliminary injunction. Again there was a hearing with briefs filed. Again their petition was denied. The Compact was approved pursuant to the Constitution,

as amended, by a vote of over 73 percent. This last vote was also observed by the United Nations. No improprieties, no intimidation, was charged in any of these proceedings.

The merits of the case in Merep were to be heard on September 8 with briefs to be filed the week before on August 31.

Then, two important political events occurred. First, on Thursday, August 27, the OEK, which had long been an opponent of the Compact and had always, especially in the House, voted against action leading to Compact approval, unanimously in both houses adopted a resolution supporting the popular actions of the people, the Constitutional amendment and the approval of the Compact. That OEK resolution has been presented to you.

Then, the following day, Friday, August 28, after long negotiations, the Merep case was resolved. In an extraordinary order, not only the President and the plaintiffs, who were parties to the lawsuit, signed the order but the Ibedul, the long-time opponent and the high traditional leader of Palau signed as well. That agreement required the Government to pay the legal fees of the plaintiffs, indicated the sincerity of the Ibedul's opposition and required the government to limit itself with respect to the acquisition of property under the Compact. (This is one of the issues left open in Gibbons v. Salii, a previous challenge to the Compact, and which had long been of concern to the Ibedul and other opponents of the Compact.)

The court--the Chief Justice--exercised his discretion and after examining the agreement ordered the case dismissed.

The next day, a different judge, Judge O'Brien, sitting in a related case, Inabo v. Republic of Palau, which had also challenged the Compact's approval process, dismissed that case, specifically finding--on the basis of Merep--that Article XV of the Palau Constitution was appropriately used to amend the Palau Constitution and that the Compact of Free Association was validly approved.

Let me explain these settlements. They can be understood in the normal course as similar to settlements of litigation which arise every day in the States as well as elsewhere. But there is something distinctly Palauan going on here as well.

Anthropologist have commented for sometime on a unique aspect of Palauan social mores: the combination of great competitiveness and a great desire for unity at the same time. It is a subtlety that outsiders frequently miss and it is easy to mock the desire for unity when one sees the competitive side of Palauan society. Our society, within a clan structure, because of this competitiveness, is more fluid than other Pacific island systems and thereby permits, even encourages, expressions of differences. Also, there is a desire in Palau to settle matters within the community as well. That is our strength. That is the strength of any society.

I mention this so you can understand fully the events surrounding the settlement of both the Merep case and, two days later, the Ngirmang case. It is easy for outsiders to see in any settlement, especially of a lawsuit that was very controversial, as societal pressures alone being involved. But no one has questioned that the settlement of the Merep case involving the Ibedul, was based on this free will of all concerned. In fact, Mr. Chairman, as you may know, it was only after outside counsel was brought in to advise opponents of the Compact that the Merep case was settled.

That was an important decision, a difficult one for the Ibedul; a difficult one for me as well. We were convinced, based on previous decisions in the Merep case--we had won both preliminary injunction hearings--and based on the advice of our counsel, that we would win. I was moved, as I think the Ibedul was moved, not only to avoid uncertainty but to obtain, in the Palauan way, a settlement, to obtain a unity, rather than a triumph.

That case, Merep v. Salii, is unquestioned in terms of the desires of the parties. That case reflects the will of not only 73 percent of the people of Palau who voted in favor of the Compact in the last election but of an overwhelming number of people of Palau, including the Ibedul, who wanted settlement of the issue.

It is the case which is now legally binding on the situation. We asked the preeminent authority on Federal Judgments in the

United States, Professor Geoffrey Hazard, Professor of Law at the Yale Law School, a man who is Director of the American Law Institute and was Rapporteur of the ALI's Restatement on Federal Judgments, to render us, and this Committee, an opinion on the effect of the consent judgment in Merep. That opinion has been distributed to you. It concludes:

> I conclude that the consent judgment in Merep v. Salii, entered pursuant to the agreement between the Ibedul and President Salii, terminated the legal claim challenging the validity of the procedure by which COFA was ratified.

In addition, our own counsel, Arnold Leibowitz, has also reviewed the Constitutional Amendment process in detail and concluded:

> (1) The people of Palau approved the Constitutional Amendment in accordance with RPPL No. 2-30 properly passed pursuant to Article XV, Sec. 11, of the Palau Constitution;
>
> (2) The Constitutional Amendment removed the inconsistencies between the Palau harmful substances provisions and the Compact as set forth in Gibbons v. Salii; and, therefore;
>
> (3) The Compact was properly ratified by the people of Palau.
>
> I conclude further that the consent judgment in Merep v. Salii involved persons representative of the people of Palau who intended to enter into a judgment of a binding character. They did so. Following Federal court precedents and the ALI's Restatement of Judgments, which is codified in the Palau National Code, I conclude that the judgment in Merep v. Salii acts to preclude reassertion of the claims asserted in that case.

I ask that both legal opinions which previously have been made available to you be made part of the record.

The parties immediately acted in accordance with the order signed by the Chief Judge, Mamoru Nakamura. High Chief Ibedul in a major address to his followers on Sunday, August 29, explained his actions and asked them to cooperate in building the Republic of Palau, putting the litigation and the rancor permanently behind them. I, as President of Palau, certified the Compact to Washington as (1) having been approved by the "Government of Palau in accordance with its Constitutional processes" and (2) "the people of Palau had approved the Compact in special referendum for that purpose."

The next day, Monday, another case was filed. That case was filed by 29 women of Palau. Its complaint copied word for word the complaint in Merep. The filing of that case, Ngirmang v. Salii, was a shock to our people. Great disappointment and frustration followed great joy at the previous settlement. Other events intervened to worsen the situation. The lawsuit was filed on Monday . On Tuesday, the Government filed a motion to dismiss on the basis of res judicata citing the consent judgment in Merep v. Salii. We asked for an immediate hearing on the case, preferably the next day.

The Chief Judge, stating that he desired to preserve the three Palauan judges for the appeal and recusing himself because he had signed the consent judgment in Merep, assigned the case to an off-island judge. Because of this, the case could not

be heard until after Labor Day, on Tuesday, September 8.

The tension mounted, the strains of five years of ratification effort and the drinking excesses attendant upon a Labor Day weekend, combined in an unfortunate outburst. On Monday night, the end of the Labor Day holiday, there was an attempted firebombing and a short fired in the dark. The father of a lawyer associated with the opposition (although not involved in the Ngirmang case) was killed.

On Tuesday, when the case was called, plaintiffs did not show up in court. Nevertheless, the Judge asked that the Motion to Dismiss on the merits be argued before him. While that oral argument was going on word was received that plaintiffs had decided to withdraw the lawsuit. The Court was asked to recess to give them an opportunity to do so.

It should be noted that this recess was for the convenience of the plaintiffs as much as the defendants since at this point the argument was taking place with the defendants, the Government, arguing against no one and the most the Judge could rule was to deny the Motion to Dismiss and permit the case to hang there. It was not possible on the pleading at that stage for the Government to lose.

What the Government was seeking, as it had sought before, was a settlement which would not further contribute to the bitterness

of the society but would permit the parties to reach some kind of amicable face-saving resolution in a situation which had been full of rancor. This was especially important in light of the Monday night shooting.

The Court recessed the case. All of the plaintiffs signed an agreement and indicated their willness to dismiss the action on the merits.

On the following day the Court, representatives of the Government, the two plaintiffs personally, the Ibedul and the lawyer who had represented the plaintiffs in Merep, were in Court at the counsel tables. Without permitting anyone to speak, and without asking what were the circumstances surrounding the matter, the Judge accepted the Stipulation but treated it as a voluntary withdrawal. In the course of doing that, he made a statement questioning whether the settlement was voluntary.

Let me say in all candor the pressures on the plaintiffs to withdraw the lawsuit were very great. But that was true before, in all of the other Compact litigation, and, indeed, it is true in any case where an unpopular cause is championed. The Judge said he did not know whether intimidation had caused the withdrawal of the lawsuit and would make no such finding. Nevertheless, in a great disservice to Palau, he made no attempt to find out although the plaintiffs and their representatives were before

him in the courtroom when he made his statement.

In the wake of Judge Hefner's statement, the six United Nation observised elections, the five previous Compact cases all seem to have been forgotten. The efforts of the Palauan people carefully to follow democratic procedures, even without significant resources, were put aside. The opponents, who styled themselves liberals, argued we should arrest immediately and that any delay indicated Government complicity. But we were careful. We followed the procedures of a democracy. We investigated and we arrested those whom we believed to have been the three perpetrators of the act.

As you know, in addition to local Palau opposition a variety of groups, not native to Palau, with a variety of motives have been opposing the Compact of Free Association. They have access to the media in the States, which we do not have, and they have access to the Congress which we do not have. A number of newspapers filed stories dredging up whatever malicious incidents could be found over the last few years. We expected that but we are concerned that their voices have been taken as reflective of the wishes of Palau. That is unfair. The United States is a country known for its fairness. It is known for its responsiveness to the will of the people. Let it be responsive to the will of the people of Palau.

Let me repeat, violence is not to be condoned. We do not condone it; we condemn it.

Our governmental institutions are strong and democratic. Our OEK is an arena of active debate. Full minutes are kept of these debates and there are the usual strains between the legislative and executive branches of government. We have voted under United Nations scrutiny now six times--the last, very recently, in August--without any indication of impropriety.

Our judiciary and our bar are strong. As I have said, we have more litigation per capita than anywhere in Micronesia contradicting those who say access to the courts is limited. And our judges--with respect to the Compact and elsewhere--have hardly proved themselves to be less than independent. We have had five cases brought in our courts challenging in one way or another the Compact ratification. Each was brought without incident and our judges voted their conscience and their interpretation of the law.

The opponents of the Compact are free to bring litigation should they wish it. But we are caught in a Catch-22. As long as they do not bring such a lawsuit, they can argue they are intimidated and, as they readily admit, they are concerned only with delay. The Washington Post reported on January 10, in an

interview with Roman Bedor, one of the leaders of the opposition, that he does not care about the nuclear issue, that he only seeks delay.

I am confident in our ability to continue to manage our democracy and to continue to provide for all people in Palau the ability to freely express themselves, to grow, to be secure and, if they wish, to register their dissent. However, it is now clear the overwhelming majority of the people of Palau wish the Compact's ratification and it is also clear to me that further delay can accomplish no purpose but to stretch out the pain, anger and bitterness in the Palau community. I have pledged to seek an end to that bitterness so that the Palau people can come together once more in harmony and build a future for Palau of which we can all be proud.

We know our potential, Mr. Chairman. I have held discussions with investors in Japan and the United States who wish to develop our private sector and will do so soon as our political status is settled. The reports in recent days emphasize the weaknesses of our society. But the strength and potentials of our society have been overlooked. Not by us, Mr. Chairman. I can tell you that we know what we can accomplish. We have submitted our first National Economic Plan to the Office of Freely Associated

State Affairs which indicates to all how we intend to go about our growth.

That is what we seek to accomplish. And that is what we will do.

We have the intelligence to govern. We have the institutions to govern. We have the desire to govern.

Mr. Chairman, we ask you to end colonialism and to give us the opportunity to govern.

The CHAIRMAN. I have read your complete statement as well.

Now, the United Nations observed each of the, I think there were five elections or were there six, six elections. And have certified that the elections were conducted in a free and fair manner.

Now, we have heard testimony this morning, which so far as I know is the first to come into the record, charging intimidation and threats with respect to the election. Have you heard those allegations before with respect to the elections?

Mr. SALII. No, sir, I have never heard that charge before, and I have never read anything along those lines in any of the United Nations visiting mission reports either.

The CHAIRMAN. So far as you know, there have not been charges before today with respect to the fairness of the elections.

Mr. SALII. No, not at all.

The CHAIRMAN. All right. Now, Mr. President, there was in your statement you refer to the case of *Merep* v. *Salii,* alleging that the constitutional amendment could only be adopted pursuant to Article XIV rather than to Article XV, and therefore could be voted on only in a general election a year and a half later.

And you say a hearing was held, briefs were filed, and the preliminary injunction was denied by the Palau Supreme Court. Now, the suit filed by Mrs. Ngirmang did you say was word for word the same, adopted the same petition, the same complaint as in the *Merep* case?

Mr. SALII. Essentially, the same case, as I understand the legal ramifications.

The CHAIRMAN. Ms. Sumang, is your lawyer here?

Ms. ISABELLA SUMANG. No, she is not here.

The CHAIRMAN. Do you have any legal claim to make other than that which was considered in the *Merep* case?

Ms. RAFAELA SUMANG. I am Ms. Sumang too, and I would like to answer that question, as I was one of the plaintiffs.

We never had a chance to get a lawyer. The fact is that Merep represented the same interests we women had in challenging the constitutionality of the amendment to our Constitution.

The CHAIRMAN. You are not a lawyer?

Ms. RAFAELA SUMANG. No.

The CHAIRMAN. Do you have a lawyer now?

Ms. RAFAELA SUMANG. Not yet.

The CHAIRMAN. Do you have the money to pay for a lawyer?

Ms. RAFAELA SUMANG. No. That was also the part of the problem. I could not get a lawyer right away.

The CHAIRMAN. How did you file the suit the first time without a lawyer?

Ms. RAFAELA SUMANG. Well, for the same interest that I believed in, the lawyers I have talked and asked about whether the constitutional amendment was legal or not, led me to file the suit to challenge the legality.

The CHAIRMAN. Did you actually draw up the suit yourself?

Ms. RAFAELA SUMANG. No.

The CHAIRMAN. Who drew up the suit?

Ms. RAFAELA SUMANG. I used the same lawsuit that Merep used.

The CHAIRMAN. Did you have a lawyer file it, or did you take the lawsuit and change the name and file it yourself?

Ms. RAFAELA SUMANG. We took the lawsuit and changed the name, and we went to the court, the ladies went to the court and filed it. And we went further on asking the court and the judge to give us time to find our lawyer. And there are records to prove that.

The CHAIRMAN. Do you have any other claims that you know about to make, legal claims that were not presented in the *Merep* case?

In other words, the *Merep* case was decided by the court. Do you have anything to allege that you know about other than that which he stated in his case?

Ms. RAFAELA SUMANG. Sir, my no understanding and no knowledge of law, I cannot answer that question.

The CHAIRMAN. All right. Thank you very much. So you have never heard, Mr. President, of any allegations that the elections themselves were not free and fair?

Mr. SALII. No, sir. And given the political atmosphere at the time, and the intensity of the opposition, if there had been any evidence, I am sure they would have taken the government to court. I have not heard anything concerning the elections.

The CHAIRMAN. All right. Can these ladies or these plaintiffs, if they can find a lawyer, can they be fully and fairly protected in the filing of such a lawsuit in Palau?

Mr. SALII. I know the government of Palau has the ability to give them reasonable protection, by which I mean that they will be protected, they will be surrounded by necessary police to give them all the protection they need.

The CHAIRMAN. Now, a lawyer was killed after the lawsuit was filed. Was he involved in the lawsuit?

Mr. SALII. He was not a plaintiff. He was one of the trial assistants, and may have been involved with the lawsuit. But I do not know if he was a counsel or not. I do not believe he was.

The CHAIRMAN. I believe your statement says he was not directly involved in the lawsuit.

Mr. SALII. No.

The CHAIRMAN. Is that correct?

Mr. SALII. Yes.

The CHAIRMAN. All right. Do you know who killed him? Have there been any arrests in the case?

Mr. SALII. We have some leads now that we are pursuing. The investigation is going, has been going for quite a while.

Incidentally, Mr. Chairman, it was testified that none of the acts of violence have been brought to court. Today, right now, the incident involving the drive-by and shooting of the Speaker's house, three suspects are undergoing trial right now.

The CHAIRMAN. They are undergoing trial?

Mr. SALII. Have been undergoing trial for the last three days for that incident.

The CHAIRMAN. And were they connected with any group, or connected with the government? Or were they just vandals? Can you give me any description?

Mr. SALII. There were three Palauans who were among the 900 government employees who were furloughed.

The CHAIRMAN. They were furloughed?

Mr. SALII. Yes.

The CHAIRMAN. How long has the trial been going on?

Mr. SALII. The trial commenced on the 26th, and is still going on.

The CHAIRMAN. Commenced on the 26th, and is still going on?

Mr. SALII. Yes.

The CHAIRMAN. All right. Thank you very much, Mr. President. Anything else you would like to add?

Mr. SALII. I just want to thank you, sir, for all of your courtesies and assistance to us.

The CHAIRMAN. Thank you very much. And we will put, of course, your entire statement in the record, along with the information, the opinions which you requested in the statement to accompany your statement.

Next, we have Mr. James Berg, Director of the Office of Freely Associated State Affairs at the Department of State, with Mr. Larry Morgan, Director of Legislative and Public Affairs for the Department of the Interior.

I understand that Mr. Morgan does not have a statement. He is here to answer questions. And Mr. Berg does. Welcome, gentlemen, to the Committee, and please proceed.

STATEMENT OF JAMES D. BERG, DIRECTOR, OFFICE OF FREELY ASSOCIATED STATE AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY LARRY MORGAN, DIRECTOR OF LEGISLATIVE AND PUBLIC AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. BERG. I do have a statement. It has been given to the Committee. And I do not intend to either read it or even summarize it in the interest of time. There are just two or three very quick points I would like to make by way of introduction, Senator.

I want to stress that it is the conviction of President Reagan and of the United States Administration that the Compact of Free Association, when it enters into force, and we are prepared and desirous to bring it into force as soon as Congress enacts the resolution before it, will in fact ensure the national security, defense, foreign policy, and political objectives that we have sought for so many years in the negotiations.

We believe that the Compact in its present form has been approved properly by the people of Palau. And when Congress enacts the resolution and we can bring it into force that we will be in a position, without impediment, to carry out the rights of the United States, as well as the obligations of the United States under that Compact.

I might also note in reference to statements made earlier today that were the Trusteeship Agreement to continue for any period at all in Palau, the United States has a greater ability to engage in some of the military activities that we are accused of wanting to try to do under the Compact, under the Trusteeship Agreement than we would under the negotiated and approved Compact of Free Association.

The CHAIRMAN. They occasionally have some maneuvers on Koror at this time. Do they not?

Mr. BERG. No, sir, we do not. We have a small——

The CHAIRMAN. They have had in the past.

Mr. BERG. There have been a couple of ship visits and there have been some small activities. There have never been any major maneuvers and certainly no stationings in Palau during the Trusteeship period.

The CHAIRMAN. I thought they had had a limited amount of Marine activity, but that has never taken place.

Mr. BERG. No, it has not. There have been visits over time, and occasionally, but there have never been a set of maneuvers that have taken place in Palau.

The CHAIRMAN. And so far as you know, under the Compact, the United States has the right to use, is it a third of the land of Palau, up to a third of the land, and must they pay for that land?

Mr. BERG. The question with respect to a third of Palau's land is not an accurate statement of what the Compact contains.

Under the Compact of Free Association the United States has contingency options to acquire use rights over portions of Palauan land and waters which we request. There is no one third of Palau that is earmarked or outlined or otherwise set out in any agreement that we have with Palau that is reserved, shall we say, for the military.

There is also no restriction at all under the Compact with respect to how Palauans may use their land. There are no restrictions at all. The only time that any kind of jointly agreed restriction would ever come into play is if the United States were to exercise any of the contingency options.

But prior to that eventuality, which is one that we do not see a strong possibility of, there are no land restrictions at all.

The CHAIRMAN. You say you do not see a strong probability of using, of exercising that option?

Mr. BERG. That is correct.

The CHAIRMAN. Do I understand that that option is mainly a fallback option in case we lost some of our present bases in Subic Bay or Clark or wherever?

Mr. BERG. I think it would be more accurately described, Senator, as a set of contingency options for contingencies that we now cannot predict with assurance, but that history tells us may happen.

There is not a direct connection with respect to the Philippines. First, we do believe that we will reach an amicable agreement with the Philippine government for the continuation of our activities there.

But even if that were not to take place, and we were to leave the Philippines and move to another area, those areas undoubtedly would be Guam or the Northern Mariana islands, which are north of Guam and which are U.S. soil.

Palau would play at best, from what I understand, a very tertiary role in any kind of fallback from the Philippines.

The CHAIRMAN. There are no plans that you know of or strong possibility of the use of Palau as a naval base?

Mr. BERG. No, sir.

The CHAIRMAN. So that the probability of calls by nuclear warships are not a great probability?

Mr. BERG. Not in relation to any particular military activity centered in Palau.

Of course, the United States Navy does move throughout the Pacific with nuclear-capable and/or nuclear-armed vessels. And during the Trusteeship period some have called at Palau, and I suspect that under the Compact of Free Association there may be similar activity in terms of port calls.

But there is no plan for a continuous system of port calls or through-put of such vessels.

The CHAIRMAN. Now, Mr. Berg, you have followed Palauan activities. You were stationed there in the Peace Corps, were you?

Mr. BERG. That is correct. But in Truk, in the Federated States of Micronesia.

The CHAIRMAN. That is right. Now, you have followed these matters for some time. We are anxious on this Committee to make sure that this matter is freely and properly dealt with.

Now, what can we do to err on the side of caution to ensure that this matter is both legally and properly considered by the people of Palau?

Frankly, I would rather have some delay now and have a feeling of the people of Palau that they have had their day in court or had their day at the ballot box than delay it. On the other hand, I do not want to, we do not want to delay the matter on some vague reference that maybe they will get together and hire a lawyer and maybe they will file a lawsuit or whatever. Give me your best judgment on that.

Mr. BERG. Mr. Chairman, I think what you can do and what you should do is precisely what you are doing.

And that is to hold an open hearing on legislation submitted by the American Administration in which persons from all persuasions, all parties, have a free and open opportunity to express their views to you.

I think it falls, in fact, to you and to your colleagues to make a judgment as to whether or not you are satisfied with the certification made to the Congress by President Reagan, with the statements made to the Congress by President Salii, and the Compact opponents or those who are urging delay.

I do not believe that delay is in the interests of the United States. I certainly do not think it is in the interests of Palau. I think last year in the Palauan context we saw predictions of what delay would bring this year.

From our point of view, we can tell you this. The reason we would like the Compact of Free Association to come into effect for Palau as soon as possible is because we know now as we never knew before that the Compact of Free Association works and works well, and does for our country what Congress intended it to do.

We have only to look at the neighboring areas of the Marshall Islands and the Federated States of Micronesia to see one year and three months of excellent experience with a working Compact of Free Association.

The CHAIRMAN. What would we have to lose to have a delay?

Mr. BERG. What would we have to lose?

The CHAIRMAN. What would anyone have to lose?

Mr. BERG. I think from the point of view of the United States government, what we would have to lose is we would have to take the blame for withholding from Palau that which commanding ma-

jorities of their people in expressions since 1983 have said that they want. And I do not think that the United States can justifiably withhold that from the people of Palau.

Number two, sir, I think that the position of the United States in the eyes of the world, particularly in the United Nations, where we continue to have Trusteeship responsibilities for Palau, will be seriously compromised if we cannot bring into effect by our own actions, or as a result of our own actions, that which the people of Palau in sovereign acts of self-determination have asked for.

The CHAIRMAN. Are you familiar with the lawsuits that were filed in this matter?

Mr. BERG. Yes, sir.

The CHAIRMAN. Have they been, in your view, fully adjudicated?

Mr. BERG. Well, I think the lawsuits that were part of the discussion this morning, the so-called *Merep* case and the Ngirmang case, both were withdrawn by action of the plaintiffs.

The CHAIRMAN. I think that, was there not a preliminary injunction first denied, and then later the suit was——

Mr. BERG. That is right. Perhaps on the technicalities of that, Howard Hills, who is the attorney in our office, could give you that specific information.

[The prepared statement of Mr. Berg follows:]

STATEMENT OF JAMES D. BERG
DIRECTOR
OFFICE OF FREELY ASSOCIATED STATE AFFAIRS
UNITED STATES DEPARTMENT OF STATE
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

JANUARY 26, 1988

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

IT IS WITH REAL GRATITUDE THAT I APPEAR BEFORE YOU TODAY ON BEHALF OF THE ADMINISTRATION TO DISCUSS S.J. RES 231, THE BILL AUTHORIZING ENTRY INTO FORCE OF THE COMPACT OF FREE ASSOCIATION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF PALAU. WE WELCOME AND APPRECIATE YOUR DECISION, MR. CHAIRMAN, TO RESPOND AFFIRMATIVELY AND EXPEDITIOUSLY TO PRESIDENT REAGAN'S REQUEST FOR PROMPT AUTHORIZATION TO IMPLEMENT THE PALAU COMPACT, FIRST BY INTRODUCING THE LEGISLATIVE PROPOSAL THE PRESIDENT SENT TO CONGRESS ON NOVEMBER 30 OF LAST YEAR, AND AGAIN BY SCHEDULING THIS HEARING AS ONE OF THE COMMITTEE'S FIRST ACTS AFTER COMMENCEMENT OF THE SECOND SESSION OF THE ONE HUNDREDTH CONGRESS. YOU, MR. CHAIRMAN, SENATOR MCCLURE, AND YOUR COLLEAGUES, HAVE DEMONSTRATED AN UNDERSTANDING -- WHICH WE IN THE STATE DEPARTMENT SHARE -- THAT TERMINATION OF THE TRUSTEESHIP HAPPENED FOR THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA BECAUSE OF A CLEAR UNITED STATES POLICY COMMITMENT TO ACHIEVE IT. YOUR DEDICATED LEADERSHIP ENDED THE STRUGGLE FOR SELF-DETERMINATION WAGED OVER SO MANY YEARS BY THE MARSHALLESE AND MICRONESIAN PEOPLES. WE IN THE ADMINISTRATION ARE NOW RELYING ON THAT SAME LEADERSHIP AND COMMITMENT TO HELP THE PEOPLE OF PALAU REALIZE THEIR GOAL OF SELF-DETERMINATION AND SOVEREIGNTY.

OVER THE YEARS, AND PARTICULARLY LAST YEAR, THERE HAVE BEEN ATTEMPTS IN THE DEBATE OVER UNITED STATES POLICIES TOWARD THE TRUST TERRITORY TO ARGUE FOR A DELAY OF SELF-GOVERNMENT SO THAT THE UNITED STATES WOULD REIMPOSE ADMINISTRATIVE CONTROL OVER PALAU. SUCH AN APPROACH WAS SUGGESTED ON THE PREMISE THAT THE PEOPLE OF PALAU ARE NOT READY FOR SELF-GOVERNMENT OR ARE UNABLE TO MANAGE THE INSTRUMENTS OF GOVERNANCE THEY THEMSELVES CREATED WITH OUR ENCOURAGEMENT. MAY I SAY AT THE OUTSET OF THIS STATEMENT, MR. CHAIRMAN, THAT THE ADMINISTRATION REJECTS BOTH THE PREMISES AND THE CONCLUSIONS OF THESE ARGUMENTS. THE PROVISIONS OF THE UNITED NATIONS CHARTER WHICH ESTABLISHED AN INTERNATIONAL TRUSTEESHIP SYSTEM ARE DEDICATED TO SELF-DETERMINATION AND SELF-GOVERNMENT.

WE INVITE THE CLOSEST POSSIBLE SCRUTINY BY CONGRESS OF THE ACTIONS OF THE UNITED STATES GOVERNMENT AND THE GOVERNMENT OF PALAU IN CONNECTION WITH THE APPROVAL AND PROPOSED IMPLEMENTATION

OF THE COMPACT OF FREE ASSOCIATION. THE PROVEN ABILITY AND COMMITMENT OF THE MEMBERS OF THIS COMMITTEE AND MANY OTHERS IN THE CONGRESS TO SORT FACT FROM FICTION, AND TO IDENTIFY THE REAL VALUES AND OBJECTIVES EMBODIED IN THE TRUSTEESHIP AGREEMENT, HAS BROUGHT US TO WHERE WE ARE TODAY.

THE PEOPLE OF PALAU, THROUGH THEIR ELECTED LEADERS, NEGOTIATED A COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES GOVERNMENT. THEY VOTED ON THAT COMPACT SIX TIMES. EVERY ONE OF THOSE VOTES, ALL BUT ONE OF WHICH WERE OBSERVED BY VISITING MISSIONS OF THE UNITED NATIONS, WERE CALLED, ORGANIZED AND ADMINISTERED BY THE GOVERNMENT OF PALAU IN ACCORDANCE WITH ITS LAWS. NONE OF THOSE VOTED WAS CALLED, ORGANIZED OR ADMINISTERED BY THE UNITED STATES OR ANY OTHER OUTSIDE PARTY. EVERY TIME THE GOVERNMENT OF PALAU ASKED THE PEOPLE OF PALAU TO VOTE ON THE COMPACT, THEY TURNED OUT IN LARGE NUMBERS -- ALWAYS AT LEAST SEVENTY PER CENT OF THE ELECTORATE -- AND APPROVED THE COMPACT BY SUBSTANTIAL, EVEN OVERWHELMING MAJORITIES. YET, BECAUSE OF THE PALAU SUPREME COURT'S AUGUST 1986 INTERPRETATION OF THE PROVISIONS IN THE PALAU CONSTITUTION, THOSE MAJORITIES WERE INSUFFICIENT FOR THE PALAU COMPACT TO ENTER INTO FORCE. BECAUSE OF THIS INTERPRETATION BY THEIR SUPREME COURT, THE PEOPLE OF PALAU, ACTING FIRST THROUGH THE POLITICAL BRANCHES OF THEIR GOVERNMENT AND THEN IN THE PROTECTED ATMOSPHERE OF THE VOTING BOOTH, AMENDED THEIR CONSTITUTION SO THAT THE COMPACT COULD BE APPROVED BY A SIMPLE, RATHER THAN A SEVENTY-FIVE PER CENT, MAJORITY. THE PEOPLE OF PALAU APPROVED THE COMPACT OF FREE ASSOCIATION WITH THE UNITED STATES ON AUGUST 21, 1987 IN AN EXERCISE OF THEIR RIGHT TO SELF-DETERMINATION THAT WAS CERTIFIED AS FREE AND FAIR BY THE UNITED NATIONS VISITING MISSION AND THE UNITED NATIONS TRUSTEESHIP COUNCIL IN ITS REPORT TO THE UNITED NATIONS SECURITY COUNCIL. NOW THE PEOPLE OF PALAU LOOK TO US -- THE UNITED STATES GOVERNMENT -- TO COMPLETE THE PROCESS AND TO REDEEM FULLY OUR PROMISE TO RESPECT IN THE WORDS OF THE TRUSTEESHIP AGREEMENT, THEIR "FREELY EXPRESSED WISHES."

THE UNITED STATES CAN FULFILL ITS PROMISE AND COMMITMENT TO THE PEOPLE OF PALAU BY TAKING TWO STEPS. THESE STEPS ARE OUTLINED IN U.S. PUBLIC LAW 99-658, THE LEGISLATION RATIFYING AND ENACTING FOR THE UNITED STATES THE PALAU COMPACT OF FREE ASSOCIATION. FIRST, THE PRESIDENT MUST CERTIFY TO CONGRESS THAT HE IS SATISFIED THAT PALAU HAS APPROVED THE COMPACT OF FREE ASSOCIATION IN ACCORDANCE WITH ITS CONSTITUTION AND IN A MANNER THAT CREATES NO IMPEDIMENTS TO THE EXERCISE OF U.S. RIGHTS UNDER THE COMPACT. SECOND, THE CONGRESS MUST ENACT A JOINT RESOLUTION AUTHORIZING ENTRY INTO FORCE OF THE ALREADY APPROVED PALAU COMPACT.

PRESIDENT REAGAN'S NOVEMBER 30, 1987 CERTIFICATION TO CONGRESS AND SUBMISSION OF LEGISLATION AUTHORIZING ENTRY INTO FORCE OF THE COMPACT CONSTITUTES THE ADMINISTRATION'S VIEW THAT THE UNITED STATES CAN CARRY OUT ALL OF ITS RIGHTS, INCLUDING ITS SECURITY AND DEFENSE RIGHTS UNDER TITLE THREE. UNDER THE COMPACT.

AS THIS COMMITTEE IS AWARE, THE ADMINISTRATION BELIEVES THAT THE COMPACT PROVIDES FULLY FOR UNITED STATES SECURITY AND DEFENSE OBLIGATIONS AS HAVE BEEN SET OUT SINCE THE OUTSET OF THE POLITICAL STATUS NEGOTIATIONS AND AS HAVE BEEN DISCUSSED AND CONFIRMED WITH CONGRESS. SPECIFICALLY, THE COMPACT PROVIDES THAT PALAU WILL BE FORECLOSED TO THE MILITARY FORCES AND PURPOSES OF THIRD COUNTRIES UNTIL OTHERWISE AGREED BY THE UNITED STATES. IT FURTHER PROVIDES OPTIONS FOR USE BY THE UNITED STATES OF LAND AREAS FOR CONTINGENCY MILITARY PURPOSES. WHILE WE DO NOT FORESEE THE NEED AT PRESENT TO AVAIL OURSELVES OF THESE OPTIONS, JUST AS WE HAVE NOT MADE USE OF PALAUAN LAND FOR MILITARY PURPOSES UNDER THE TRUSTEESHIP, THE UNITED STATES OBLIGATION UNDER THE COMPACT TO DEFEND PALAU REQUIRES THAT THE UNITED STATES HAS THE AUTHORITY, INCLUDING LAND USE OPTIONS, TO CARRY OUT THAT OBLIGATION. FINALLY, UNDER THE TERMS OF THE COMPACT, THE UNITED STATES MAY INTRODUCE INTO PALAU NUCLEAR POWERED AND NUCLEAR CAPABLE VESSELS AND AIRCRAFT INCIDENT TO TRANSIT AND OVER-FLIGHT IN A MANNER CONSISTENT WITH OUR WORLDWIDE PRACTICES. THE UNDERTAKINGS OF THE UNITED STATES AND PALAU IN THE SECURITY AND DEFENSE AREA ARE SET FORTH IN FULL IN THE COMPACT AND ITS RELATED AGREEMENTS AND ARE NOT QUALIFIED OR LIMITED BY OTHER DOCUMENTS OR AGREEMENTS.

THE PRESIDENT'S CERTIFICATION THAT PALAU HAS COMPLETED ITS CONSTITUTIONAL PROCESS FOR APPROVAL OF THE COMPACT IS BASED UPON THE GOVERNMENT OF PALAU'S AUGUST 29, 1987 CERTIFICATION TO THAT SAME EFFECT. THIS IS THE SAME BASIS ON WHICH PRESIDENT REAGAN CERTIFIED TO CONGRESS THAT THE PEOPLES OF THE MARSHALL ISLANDS AND THE FEDERATED STATES OF MICRONESIA HAD COMPLETED THEIR RESPECTIVE CONSTITUTIONAL APPROVAL PROCESSES OF THE COMPACT AND THE BASIS ON WHICH PRESIDENT FORD CERTIFIED TO THE 94TH CONGRESS THAT THE PEOPLE OF THE NORTHERN MARIANA ISLANDS HAD COMPLETED THEIR APPROVAL PROCESS OF THE COMMONWEALTH COVENANT. THE PRESIDENT'S CERTIFICATION IS GROUNDED IN LONG-STANDING UNITED STATES POLICY THAT THE GOVERNMENT OF PALAU, AND NOT THE UNITED STATES GOVERNMENT, IS RESPONSIBLE FOR INTERPRETATION OF PALAU'S CONSTITUTION AND THAT THE PEOPLE OF PALAU ARE THE ULTIMATE ARBITERS OF THEIR SELF-DETERMINATION. PALAU PRESIDENT LAZARUS SALII'S AUGUST 29 CERTIFICATION WAS BASED UPON THE EXISTING AND CURRENT STATE OF PALAU'S CONSTITUTIONAL PROCESS WITH RESPECT TO APPROVAL OF THE COMPACT. WE RESPECT THAT ACTION AND DO NOT SUBSTITUTE OUR JUDGMENT FOR THAT OF PALAU.

LET ME ADD THAT THE ADMINISTRATION BELIEVES THE PROCEDURES FOLLOWED BY PALAU IN AMENDING THE CONSTITUTION SO THAT THE COMPACT COULD BE APPROVED BY A SIMPLE MAJORITY WERE VALID AND PROPER. MOREOVER, GIVEN THE LONG AND DIFFICULT HISTORY OF THIS PROCESS, IT REPRESENTS A SIGNIFICANT POLITICAL BREAKTHROUGH THAT THE CONSTITUTIONAL AMENDMENT COULD BE PROPOSED AND ADOPTED. THE AMENDMENT QUESTION DID NOT APPEAR OUT OF THIN AIR ON AUGUST 4. THE AMENDMENT REFERENDUM WAS CALLED BY AN ACTION OF THE PALAU NATIONAL CONGRESS. THE LEADERS OF PALAU, BOTH ELECTED AND TRADI-

TIONAL, WHO MADE THIS POSSIBLE DEMONSTRATED WISDOM AND COURAGE AND ACTED IN PALAU'S NATIONAL INTEREST. SO DID THE PEOPLE OF PALAU WHEN THEY APPROVED THE AMENDMENT ON AUGUST 4. THE PEOPLE OF PALAU WERE AND ARE THE FINAL JUDGES OF THE LEGALITY AND OUTCOME OF THE AMENDMENT QUESTION PLACED BEFORE THEM.

THE NON-PALAUAN INTEREST GROUPS WHO ALLEGE THAT THE PALAU NATIONAL CONGRESS WAS SOMEHOW COERCED INTO ENACTING THE LEGISLATION CALLING THE AMENDMENT REFERENDUM IGNORE THE FACT THAT THE SAME PALAU NATIONAL CONGRESS -- BOTH HOUSES -- ACCEPTED AND AFFIRMED THE RESULTS OF THE AMENDMENT REFERENDUM BY PARALLEL RESOLUTIONS AND THE FACT THAT THERE HAS BEEN NO LEGISLATIVE CHALLENGE, INVESTIGATION OR OPPOSITION TO THE AMENDMENT PROCESS AND OUTCOME IN THE INTERVENING FIVE MONTHS. IN THEIR CALLING OF THE AMENDMENT REFERENDUM AND IN THEIR AFFIRMATION OF THE RESULTS OF THAT REFERENDUM, THE MEMBERS OF THE PALAU NATIONAL CONGRESS WERE ACTING NOT OUT OF COERCION OR INTIMIDATION BUT OUT OF DUTY TO THE PEOPLE WHO ELECTED THEM -- THE SAME PEOPLE WHO AMENDED THE CONSTITUTION AND APPROVED THE COMPACT.

IN THE PERIOD AFTER THE AUGUST VOTES, AND PARTICULARLY OVER LABOR DAY WEEKEND LAST SEPTEMBER, TRAGIC EVENTS TOOK PLACE IN PALAU. AN INDIVIDUAL WAS KILLED AND PROPERTY WAS DESTROYED. THIS VIOLENCE WAS SENSELESS AND DEPLORABLE. IT SERVED NO PURPOSE. THERE ARE THOSE WHO ALLEGE THAT THESE EVENTS CREATED AN ATMOSPHERE OF INTIMIDATION RESULTING IN THE WITHDRAWAL OF LAWSUITS PENDING IN THE PALAU SUPREME COURT CHALLENGING THE LEGALITY OF THE AUGUST 4 CONSTITUTIONAL AMENDMENT REFERENDUM. WHETHER OR NOT THESE ALLEGATIONS APPEAR PLAUSIBLE AT FIRST GLANCE, THE DOMINANT POLITICAL REALITY IN PALAU IS THAT THE RECONCILIATION EFFECTED BETWEEN THE PALAU PRESIDENT AND THE PALAU TRADITIONAL LEADERSHIP REPRESENTED BY IBEDUL YUTAKA GIBBONS WAS RESPONSIBLE FOR BOTH THE WITHDRAWAL OF THE LAWSUITS AND THE FACT THAT NO LAWSUITS HAVE BEEN FILED IN THE INTERVENING HALF A YEAR. MR. CHAIRMAN, THE ADMINISTRATION AFFIRMS TO THIS COMMITTEE THAT PALAU IS A COUNTRY UNITED IN ITS DESIRE TO BRING THE COMPACT INTO EFFECT IMMEDIATELY AND DEMONSTRABLY CAPABLE OF GOVERNING ITSELF IN ITS NEW SOVEREIGN STATUS.

IN THE DRAFT JOINT RESOLUTION THE PRESIDENT SUBMITTED TO CONGRESS, THE ADMINISTRATION ALSO REQUESTS THAT CONGRESS REPEAL A SENTENCE NOW INCLUDED IN THE LEGISLATION ENACTING THE PALAU COMPACT AND MAKE TECHNICAL AMENDMENTS TO ANOTHER RELATED SENTENCE. THE SENTENCE WE SEEK TO HAVE REPEALED WOULD STRIP JURISDICTION OVER CLAIMS AGAINST PALAU FOR DEFAULT ON A POWER PLANT LOAN FROM THE VERY COURTS THAT PALAU AND ITS CREDITORS HAD ORIGINALLY AGREED WOULD HAVE JURISDICTION OVER THE MATTER. THE ADMINISTRATION BELIEVES THAT THIS JURISDICTION STRIPPING PROVISION FRUSTRATES THE INTENT OF THE PARTIES AND THE BINDING NATURE OF THE ORIGINAL CONTRACT FOR THE POWER PLANT, RUNS DIRECTLY CONTRARY TO THE THEORY AND PRACTICE OF THE FOREIGN SOVEREIGN IMMUNITIES ACT AND CREATES AN UNACCEPTABLE PRECEDENT OF UNITED STATES

GOVERNMENT AFTER-THE-FACT ACTION ON INVESTMENT MATTERS THAT WILL HAVE A NEGATIVE EFFECT ON FUTURE INVESTMENTS IN THE UNITED STATES. WHILE THE ADMINISTRATION HAD HOPED, AS WE REQUESTED, THAT OUR PROPOSALS WITH RESPECT TO SECTION 104(E) OF PL 99-658 WOULD BE INCLUDED IN THE BILL YOUR COMMITTEE INTRODUCED, WE ARE HEARTENED AT YOUR STATEMENT IN A LETTER TO PALAU PRESIDENT SALII THAT THE COMMITTEE INTENDS TO TREAT THE MATTER OF REPEAL OF THE JURISDICTION STRIPPING PROVISION IN ANOTHER BILL. IT IS OF COURSE OUR VIEW THAT FINAL CONGRESSIONAL ACTION ON SECTION 104(E) SHOULD NOT RAISE THE SAME IMPORTANT PROBLEMS OF LEGALITY AND PRECEDENT INITIALLY CREATED BY SECTION 104(E). THE ADMINISTRATION LOOKS FORWARD TO WORKING WITH YOUR COMMITTEE, THE PALAU GOVERNMENT AND THE INVOLVED PRIVATE PARTIES TO RESOLVE THIS MATTER THAT IS SO CENTRAL TO PALAU'S FUTURE STANDING IN THE AMERICAN AND INTERNATIONAL FINANCIAL MARKETS.

MR. CHAIRMAN, I KNOW THERE ARE MANY OTHER ISSUES TO DISCUSS TODAY. I LOOK FORWARD TO DOING SO, AND TO ANSWERING ANY QUESTIONS YOU MAY HAVE.

Mr. HILLS. Mr. Chairman, at the time that the executive branch of the Palau national government, pursuant to legislation enacted by the Palau National Congress, scheduled the August 4th referendum to amend the Constitution, the plaintiffs in those suits, in the Merep suits, sought a preliminary injunction to stop the referendum.

One of the criteria applied by the court in considering that application for injunctive relief was whether or not the plaintiffs were able to demonstrate a likelihood of success on the merits.

With respect to that motion, prior to the August 4th vote, the court denied injunctive relief and allowed the government to go ahead and hold the referendum.

The statute that authorized the referendum also provided that if the referendum were successful, that is if it received a simple majority in three-quarters of the states, which it did—it received 73 percent overall in 14 of the 16 states—the statute provided that if that electoral burden were met in the August 4th vote, that then there would be another vote, which was the vote that took place August 21st.

Prior to the August 21st vote, as I understand it, the plaintiffs once again sought injunctive relief, and that injunctive relief a second time was denied, attempting to stop the process.

It was in the aftermath of that litigation history, and it was in the aftermath of the vote, that the Ibedul, the High Chief Yutaka Gibbons, on behalf of, and in conjunction with the plaintiffs, approached President Salii and negotiated the memorandum of agreement with respect to certain issues that had bothered the Ibedul over the years.

President Salii and Chief Gibbons entered into that memorandum of agreement, and in conjunction with that, the plaintiffs withdrew their suit and stipulated to that withdrawal.

The CHAIRMAN. Now, the matter, do I understand, was considered twice on preliminary injunctions, or for injunction, not preliminary injunction?

Mr. HILLS. For injunctive relief in the form of stopping the voting process so that the——

The CHAIRMAN. Twice, considered the August 4th and August 21st, I believe were the two dates.

Mr. HILLS. Yes, Mr. Chairman.

The CHAIRMAN. Yes, August 4th and August 21st, it was twice considered by the court. And the issue at that time, two issues, the likelihood of success, and the legality of the election. Is that correct?

Mr. HILLS. Yes. Those were both among the criteria that the court examined.

The CHAIRMAN. All right. Was the issue on the legality of the election fully at issue there? In other words, has that issue been decided completely by the court?

Mr. HILLS. Well, as I said, in the aftermath of the votes, the parties entered into a stipulation for dismissal of the case.

The CHAIRMAN. Yes. I understand it was dismissed later on. But what I am getting at is, was the scope of the hearing on the legality any different at the pre-election hearings than it would have been in post-election hearings?

Mr. HILLS. I think that the review of the matter by the court in the context of the application for injunctive relief would necessarily have been more narrow than a full-blown trial on the merits of the matter that might have taken place, had the parties not after the election entered into a stipulation for dismissal of the case. .

The CHAIRMAN. Was there any factual matter to be considered? Or was it really just stipulated, a legal question to be stipulated under the law?

Mr. HILLS. Actually, it is interesting, Mr. Chairman, there were actually two cases dismissed.

There had been an earlier case, the *Inabo* case in which plaintiffs with a different theory of the case had taken the position, as I understand it, that the 75 percent requirement under the Constitution was, there is a provision in the Palau Constitution that says, no provision of this Constitution shall be implemented in a manner inconsistent with the Trusteeship Agreement.

So the *Inabo* plaintiffs took the position that by requiring, under the Trusteeship concept, 50 percent majority under international law is what we refer to as self-determination. And that the Constitution, by requiring 75 percent, was in conflict with the Trusteeship Agreement.

It was creating a standard for self-determination that was inconsistent with international law with respect to self-determination, majority rule, et cetera. That case was also dismissed at the same time, or at approximately the time that the *Merep* case was dismissed.

And in that case, the parties stipulated that the Constitution had been properly amended on August 4th. And the court accepted that stipulation, and that became the ruling in that case.

In the *Merep* case, the parties came in and stipulated to the fact that on the basis of the self-determination process that had taken place, and on the basis of the agreement that had been reached between Yutaka Gibbons and the President, that they were agreeing that the case should be dismissed and that the Compact should be allowed to come into effect.

Now, I think it would be overstating it to say that the matter was resolved on the merits and all the issues were resolved.

On the other hand, you did have a case in controversy, you did have adverse parties, they did come in and they did stipulate that they were going to resolve the legal issue in the case in favor of going ahead with Compact implementation.

The CHAIRMAN. I understand that. But was there any factual matter in dispute?

Mr. HILLS. Well, there was a question of whether or not the government in actions it was taking in conducting the elections was acting in accordance with the Constitution.

The CHAIRMAN. That is a legal question.

Mr. HILLS. Yes.

The CHAIRMAN. And that legal question was at issue.

Mr. HILLS. In the injunctive relief, and I think it was also the legal question that the parties stipulated that they would settle on and set aside so that the Compact could take effect.

The CHAIRMAN. Well, what I am getting to was, frequently on a preliminary injunction, you assume for the purpose of the prelimi-

nary injunction that you might stipulate it or you might do it on the basis of depositions. But you rarely have a full trial on the merits where witnesses come in.

My question is, was there factual matter to be determined with witnesses and a trial? Or was it rather a legal question, the legality of the Compact of the election et cetera?

Mr. HILLS. I cannot, not having been there, state definitively. My understanding from the reports I have received is that it primarily dealt with, focused on the legal question.

The CHAIRMAN. Exclusively or primarily?

Mr. HILLS. Primarily. I am sure that there were factual questions at issue as to whether or not, what kind of damage or harm would be done if the election went forward, and that type of thing.

But in terms of answering that question with any precision, I would have to get back to the lawyers for the government of Palau who were involved in it. I would be perfectly happy to submit a written response in detail as to the issues of fact that may have been raised in that proceeding.

The CHAIRMAN. Yes. I wish you would. The question is whether it would be worthwhile to have this matter further litigated.

And I am sensitive to the fact that we have threats, intimidation, and actual violence, which may or may not have been directed toward the lawsuit. But clearly these witnesses say that they feel threatened about bringing a further lawsuit.

Now, the question is whether that lawsuit would really be productive of anything, or whether it is simply a legal question that has already been decided. To be sure it has not been appealed, it has not gone the full route, because it was finally dismissed.

But if the legal question itself has been fully decided, and it is only a legal question and not a factual question, that would be important in our decision as to whether it is important to go forward.

Mr. Morgan, did you have anything to add on these matters?

Mr. MORGAN. No, sir. I am basically here as a resource witness in the event that you had any questions for Interior, sir.

The CHAIRMAN. Has President Salii made any request for help in respect to police backup on these charges of intimidation? And if he does make such a request, could those services be given to him?

Mr. MORGAN. Early on, the President of Palau requested assistance in providing additional training to his law enforcement authorities.

The Palauan police had participated in the Micronesian Police Academy. The Department of the Interior participated with the Alaska State Police, where we provided the training. There were about 15 Palauan police officers who have participated in that.

The Micronesian Police Academy last year was moved totally under the control of the Micronesian authorities, with oversight still being provided and assistance by the FBI and the Department of Interior.

At the time these incidents took place, the President requested from our office technical assistance funding to hire an individual to become part of the Palauan police force to assist them in further development.

In addition, he asked for assistance in the investigation, and the Department assigned Mr. Bill Stennett, who is the former chief of

security for the government, to go to Palau and assist in the investigations.

He was commissioned as a Palauan police officer. He was a consultant under contract to the Department of Interior. The investigations have been conducted by the Palauan authorities under Palauan law.

In addition, assistance was requested from the Department of Justice through the Bureau of the FBI to do testing on evidence of the trial, et cetera, ballistics tests.

Basically early on the Assistant Secretary made the decision and told President Salii that we were prepared to provide any assistance requested to assist Palau in the conduct of its inquiry into the allegations of the violence, et cetera. And as far as I know, that has been fully complied with.

The CHAIRMAN. These plaintiffs, these ladies who speak of bringing this lawsuit, in your view, do they need protection on their own, whether requested by President Salii or not? And could that be provided?

Mr. MORGAN. The question was put to the Department of Justice several months ago as to what authority we had to provide additional assistance to Palau.

As you know, under the Trust Territory government, we had an attorney general, we had a court system, we had the Micronesian Bureau of Investigation, which was our law enforcement arm.

But in 1981, when Palau became self-governing under secretarial order, as they increased their capabilities and the courts were certified and they assumed total control of their own government, the counterpart in the Trust Territory government was reduced.

Today, we no longer have a Micronesian Bureau of Investigation. We no longer have an attorney general. We still have the high court, which is primarily the chief justice of the high court, which still has authority over the courts of Palau, but only on certain issues.

We also have an inter-agency agreement between the U.S. marshall service and the Department of Interior as a contingency plan in the event, and this not only covered Palau, this covered all of Micronesia, in the event of some type of civil unrest that we could call on the U.S. marshall service.

The CHAIRMAN. Well, just on the simple question, if we ask you to protect these plaintiffs in bringing another lawsuit, could you do that? Would you do it?

Mr. MORGAN. We truthfully would prefer that it be done by the Palauan law enforcement authorities.

But to get to the point of your question, we are advised by the Federal Bureau of Investigation that they question whether they have sufficient authority. They then came back and requested from the Department of Interior a legal opinion which we based our position that they had authority.

That opinion was issued by the Associate Solicitor for General Law on December 11. Since that time there have been several meetings that have taken place between the Department of Justice and the Department of Interior, but there has been no resolution.

At the present time, the position of the Federal Bureau of Investigation, pursuant to instructions from their general counsel, is that they lack sufficient authority.

Mr. BERG. Senator, it may be useful to say in the context of this question, I would suspect that if President Salii ever felt, as he said this morning, if he ever felt that his government did not possess the capability to provide to these individuals the protection that they seek, and that is reasonable, his history would indicate that he probably would turn to the United States government, most particularly to Interior, to seek additional help.

And under those circumstances, Interior would be in a position to be able to provide it.

The CHAIRMAN. Well, Mrs. Sumang, do you trust President Salii to seek protection, to seek assistance from the United States?

In other words, do you trust his good faith in this matter?

Ms. ISABELLA SUMANG. I cannot speak for the group.

The CHAIRMAN. How do you feel? You can speak on your own.

Ms. ISABELLA SUMANG. This is how Gabriela feels. You do not ask a person from the enemy's camp to help you, protect you, because she feels that the government and all the forces in the government are pro-Compact.

And she told me to say that we do not feel secure to ask somebody under the other camp to give you protection when it is the person who is against you.

The CHAIRMAN. Mr. Speaker, would you trust President Salii to protect these women, if they sought to file a lawsuit?

Mr. OLIKONG. If the President asked for the U.S. marshalls and state troopers from the United States, we will be happy with the arrangement. But if it is local law enforcement people, I have my doubts.

The CHAIRMAN. Do you think the solution to this matter is to bring it back into court?

Mr. OLIKONG. I believe so, sir.

The CHAIRMAN. Now, Mr. Berg, there is a political conflict here between, there is a presidential election to be held, is there not?

Mr. BERG. In Palau?

The CHAIRMAN. Yes.

Mr. BERG. That is correct. Next November, same time as ours.

The CHAIRMAN. Next November? And there is, could the matter be concluded in court prior to that time?

Mr. BERG. I cannot say. There have been, of the many cases in the Palau Supreme Court that have dealt with the Compact, some have taken months and months, half a year, nine months. Others have gone extraordinarily fast.

So I suspect it depends on what the judges themselves might want to do in terms of expediting it. I am told that procedurally, if everyone wants it to move quickly, that cases could move fairly quickly.

But I think even if a case were filed today, we are looking into probably May or June or even later in the summer before it would have gotten all the way through all the procedures, including the appeal section.

Without the Compact of Free Association being able to enter into force prior to that period, Palau, this year, as it did last year, is going to face serious crippling financial difficulties.

So I think from the perspective of the operations of the government of Palau, such a luxurious court schedule would cause major problems there.

The CHAIRMAN. Well, here you have elections that took place over a period of six times, each time the people of Palau voted by 62 percent or higher in favor of the Compact.

The issue of the legality of the Compact was ruled on twice by the court, although we do not know whether the scope of that was identical to the scope of a suit later to be filed, if now filed, whether that legal question is identical, I suspect it is identical. That there is no factual matter to be determined by that.

Mr. BERG. Mr. Chairman, if we could interrupt for just a second, I think Mr. Hills has some additional information on the factual legal question.

Mr. HILLS. I apologize for interrupting, but I just wanted to tell you, and it seemed like a good opportunity.

I have had an opportunity to confer with Governor John Rechucher, who is a Palauan citizen and a member of the bar in Palau, as well as Washington attorney Arnold Leibowitz, who represented the government of Palau, or was prepared to represent the government of Palau in that case, and did not get the opportunity to do so because of the settlement.

They both have advised me that the question that was before the court on both of the applications for injunctive relief and which they believe was resolved by their settlement was the legal question, and exclusively the legal question, of can you, under Article XV, the transition article of the Palau Constitution, Section 11 thereof, have a transitional amendment to achieve compatibility between the Compact and the Constitution at any time, or can you only amend the Compact subject to the provisions of Article XIV of the Palau Compact, which are the general permanent amendment provisions.

In other words, the Constitution has one section on amendments, Article XIV, and one section on transition to self-government and to free association. The amendment that was done on August 4th was done pursuant to the transitional provision, which specifically covers amendments to achieve compatibility between the Compact of Free Association and the Constitution.

The position that was presented by the opposition, or by the opponents, the advocates of delay, was that a separate provision in the general amendment provisions of Article XIV, which are the permanent amendment provisions of the Constitution, which limits amendments to every four years during the general elections, somehow should be transposed on top of the transitional amendment provision.

And as someone who has been involved in the process for a number of years, the theory of transposing Article XIV onto Article XV to me is a very implausible one.

The CHAIRMAN. Well, without respect to the merits of the legal question——

Mr. HILLS. But that question was twice presented to the courts, and twice the courts said that they were not going to stop the process on the basis of the plaintiff's position on that matter.

And I think, Senator, you are absolutely correct—

The CHAIRMAN. They did in fact rule twice that the legal question was without merit.

Mr. HILLS. They ruled twice that they would not stop——

The CHAIRMAN. I know that that was the result, they denied the injunction.

Mr. HILLS. Right.

The CHAIRMAN. But did they actually rule on the merits of the legal question?

Mr. HILLS. In that they denied the relief sought, which was, on the basis of that legal theory, to stop the election. So I think the answer to your question is yes.

The CHAIRMAN. Or do you know?

Mr. HILLS. Excuse me?

The CHAIRMAN. They do not necessarily, you know, you can deny an injunction on the grounds of lack of irreparable harm, because the final question can be ruled on later, or you can deny it on the grounds that the legal question is without merit.

Mr. HILLS. That is correct. And what the court determined was that they did not have sufficient likelihood of success on the merits to justify granting injunctive relief. And that is the nature of extraordinary injunctive relief. That is the nature of those proceedings.

But I think you, Mr. Chairman, were absolutely correct in describing the overall process. Here you have a situation where on four occasions——

The CHAIRMAN. Well, I understand that. But the question is, was the legal question decided yes or no? And I think what you are telling me is you are not certain about the grounds of that.

Do you want to give us that in a memorandum? Or do you know that that was decided on the merits?

Mr. HILLS. I would, again, I would just say that the nature of injunctive relief is, the plaintiff has a burden to show sufficient likelihood of success on the merits to be granted the relief. The court decided they did not show sufficient likelihood of success, and denied it.

And again, I think the nature of injunctive proceedings, or equitable proceedings——

The CHAIRMAN. Well, I understand the nature of equitable proceedings and injunctive relief. Usually that question of likelihood of success has to do with the factual determination. It does not have to do with the legal determination.

If it is a legal determination and they find that there is, it is without merit, it is not the kind of thing where we are saying, well, it is unlikely that you will decide this, that we will rule in your favor, they decide it yea or nay.

I am just wondering whether you know whether or not they decided that question.

Mr. HILLS. I can tell you, and I will consult further, and if there is anything I think that can be added, we will submit it in writing.

But I will just tell you that I am advised, and it was my understanding, that the question before the court was the legal question of whether or not the constitutional amendment was valid under the Constitution, and that the court looked at that legal question and decided that the government of Palau was proceeding in accordance with the Constitution, and that the court was unwilling to obstruct those proceedings on the basis of what the plaintiffs were presenting.

[Subsequent to the hearing the Department of State submitted the following:]

WRITTEN STATEMENT OF POSITION OF THE DEPARTMENT OF STATE
FOR INCLUSION IN RECORD OF JANUARY 26, 1988,
HEARING ON PALAU COMPACT BEFORE COMMITTEE ON
ENERGY AND NATURAL RESOURCES, U.S. SENATE

During and subsequent to the January 26, 1988 testimony of Department of State witnesses before the Senate Committee on Energy and Natural Resources, the Committee sought further written responses from the Department on the validity of Palau's constitutional amendment in August 1987, and on the effect of litigation in Palau challenging the constitutional amendment and subsequent plebiscite on the Compact of Free Association between the United States and Palau ("Compact"). The Department is pleased to provide the following additional comments.

On November 30, 1987, President Reagan certified to Congress that Palau had validly approved the Compact in accordance with Palau's constitutional processes. In particular, the President stated that the Compact "has been approved [by Palau] in accordance with Section 411(a) and (b) thereof, and that there exists no legal impediment to the ability of the United States to carry out fully its responsibilities and to exercise its rights under Title Three of the Compact."

Section 411 of the Compact, to which this certification refers, establishes certain conditions precedent to the entry into force of the Compact, namely:

(a) Approval by the Government of Palau in accordance with its constitutional processes;

(b) Approval by the people of Palau in a referendum called on this Compact; and

(c) Approval by the Government of the United States in accordance with its constitutional processes.

The President based his certification on notification from the Government of Palau that the first two of these conditions had been met, stating that, "on August 29, 1987, President Lazarus E. Salii certified in writing to the Department of State that 73 percent of the people of Palau voting in a plebiscite observed by the United Nations on August 21, 1987, approved the Compact. The Palau National Congress gave its final approval to the Compact on August 27, 1987."

President Reagan's certification to Congress comports with the general policy of the United States to recognize the authority of foreign sovereigns to interpret their own constitutions and to determine the validity of their own internal

processes. In the case of Palau, Article VIII of the Palauan Constitution vests its President with general foreign affairs responsibilities, including the power "to conduct negotiations with foreign nations." The United States has accordingly recognized the authority of President Salii and his duly authorized representatives to speak on behalf of the Government of Palau in the conduct of negotiations on the Compact. Similarly, the United States has relied on President Salii's notification that Palau has completed its internal constitutional process for approving the Compact.

With respect to the question of litigation in Palauan courts, three cases were filed challenging Palau's constitutional amendment in August 1987, and the validity of the ensuing plebiscite. All three cases were dismissed. The first dismissal, in the case of Merep et al. v. Salii et al., Civil Action No 139-87, Trial Division, Supreme Court of Palau, August 28, 1987, rested on a stipulation by the parties that "the Compact of Free Association has been approved and ratified by democratic means and ratified by the Olbiil Era Kelulau." Subsequent dismissals in the two other cases were based on similar stipulations by the parties.

Department witnesses before your Committee have described these lawsuits in considerable detail. At least one private analysis, written by Professor Geoffrey Hazard, Jr., has concluded that the dismissals of these lawsuits, given the parties, issues and circumstances involved, would likely bar successful relitigation of the matter. While the Department is not in a position to predict how a Palauan court might actually rule in a hypothetical future lawsuit, we would like to state our own basis for recommending that Congress pass the Joint Resolution authorizing entry into force of the Compact:

The Government of Palau has stated authoritatively that it approved the Compact in accordance with its constitutional processes. The United States generally relies on such statements. In the case of Palau, lawsuits challenging Palauan Compact approval were all dismissed, and there has been no further court activity for over six months. In light of these circumstances, the Department does not consider it necessary to delay entry into force of the Compact on the possibility that someone might decide to file another lawsuit and that such lawsuit might successfully challenge the Palauan Compact approval process.

The Department of State hopes that these additional comments will assist you in considering the Joint Resolution authorizing entry into force of the Compact of Free Association between the United States and Palau.

The CHAIRMAN. Thank you. Mrs. Sumang and Mr. Speaker, can you suggest any other witnesses or anything else that we might do to have this matter fairly dealt with by the Committee?

Ms. RAFAELA SUMANG. Mr. Chairman, if I understand the question correctly, there was never a ruling of any of the suit challenging the legality of the Constitution.

We never reached the merit of the case. None of those cases challenging the amendment of the Constitution were ever tried. They were always withdrawn before the trial proceeded.

The previous case of *Merep* v. *Salii* was never tried. It was withdrawn. My case was never tried. It was withdrawn. So the memorandum that the judge put out never reached the Merep, and there was no judgment.

The CHAIRMAN. And that is what you are seeking, and that is all you are seeking is a ruling on the merits of that case.

Ms. RAFAELA SUMANG. Yes, the legality of the amendment of the Constitution.

The CHAIRMAN. Is that correct, Mr. Speaker? That is what you are seeking, and that is all you are seeking?

Mr. OLIKONG. That is what we are hoping for, Mr. Chairman.

And as to your question as to what we can do to be able to settle this question, earlier, is that I see every time you have a hearing we have the United States State Department testifying without the Executive branch of the government.

What I see is someone that could carry it into the court is for these people to file a suit, because they are very involved in the issue. Or for the executive branch of our government to file a suit.

In that way we all have to deal with many securities for the ladies and for myself, and for other opponents of the Compact, because of their various reasons.

The CHAIRMAN. You would like for the government to file a suit?

Mr. OLIKONG. Yes. Anybody can file a suit. If these people are interested in preventing the Compact, very soon maybe they could be asked to file a suit. Or the President could have one of his assistants file a suit, just so they can get into the court.

The CHAIRMAN. That is certainly something that the government can consider. And we will discuss that matter. But I think we at least have a clear understanding now of what it is that you do want, and we will discuss that here with the Committee.

Ms. ISABELLA SUMANG. Mr. Chairman, I strongly believe that it should be tried and be heard, for the fact that I know I believe that it is not legal, and I understand that. The American law division also said it is not legal.

The CHAIRMAN. Thank you very much. I think we have heard fully from all parties this morning. I appreciate the hearing. Thank you for coming. The Committee will be adjourned.

[Whereupon, at 12:15 p.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

REPUBLIC OF PALAU

Washington Representative's Office

Hall of the States, Suite 308
444 North Capitol Street, NW
Washington, DC 20001

NORIWO K. UBEDEI
WASHINGTON REPRESENTATIVE

Telephone: (202) 624-7793

February 18, 1988

The Honorable J. Bennett Johnston
Chairman, Committee on Energy and
Natural Resources
United States Senate
358 Dirksen Senate Building
Washington, DC 20510-6150

Dear Mr. Chairman:

This is to acknowledge the receipt of your letter dated February 1, 1988, addressed to the Honorable Lazarus Salii, President of the Republic of Palau, together with its attachment.

I hereby submit to you the attached answers to the questions in the same order as the questions appear.

Sincerely yours,

Haruo N. Willter
Special Assistant to the President

Attachment

RESPONSES TO QUESTIONS PRESENTED TO
LAZARUS E. SALII
PRESIDENT OF THE REPUBLIC OF PALAU
FOR
SENATOR J. BENNETT JOHNSTON
CHAIRMAN, COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

FEBRUARY 10, 1988

(1) QUESTION: Later this year you will be appearing before the Appropriations Committee to testify on your FY89 budget request. Would you summarize your government's current financial conditions? Particularly, will it be necessary to furlough workers again this year as you did last year?

ANSWER: The Republic of Palau is currently operating under a continuing resolution based on FY87 funding level of $17.6 million in anticipation of early implementation of the Compact at which time a Unified National Budget can realistically be put together based on higher level of funding provided under the Compact agreement.

If the Compact is not implemented or other new sources of funding is made available to Palau government by the beginning of the third quarter, the President will have no alternative but to furlough government workers as he did in fiscal year 1987.

It should be pointed out that the $3.5 million supplemental requested by the President earlier this fiscal year is barely enough to cover ongoing national government workers salaries and does not cover state governments operations requirement and other outstanding obligations, bank loans and other bills, which are long over due and must be liquidated in FY88. This supplemental was viewed to be a temporary solution to keep the government going until the Compact is implemented.

The Republic has not submitted its FY89 budget to the Department of the Interior because we anticipated implementation of the Compact earlier in fiscal year 1988, therefore, we will be under Compact funding in FY89.

(2) QUESTION: It is reported that in July, 1983, you were paid $100,000 by IPSECO. Could you please tell the Committee the purpose of this payment and describe your connection with the Government at the time you received the payment?

ANSWER: I was in a private business at that time, owned and operated Belta Travel Agency. Mr. Gordon Mochrie and I reached a gentlemen agreement to form a joint venture

in airline business. Mr. Mochrie agreed to provide funds to Belta Travel Agency to be used to develop local facilities, gather data and prepare the base to start the airline.

The transaction was purely a separate private business venture, not in anyway connected to the IPSECO Power Plant contract negotiation.

At that time, I was Ambassador on Status and Trade Negotiations serving the government without compensation.

(3) QUESTION: Is there any written record of this transaction?

ANSWER: No, the agreement was based on mutual understanding and trust.

(4) QUESTION: In addition to the IPSECO project, what other projects, such as roads and airports, has the Government of Palau contracted for, and what is the total financial obligation of the government?

ANSWER: Based on the original concept of the IPSECO project, we feel that the amount owed to the project is not a general obligation of the government of Palau as claimed by the banks but a project account debt to be paid over a period with the revenues generated from the project.

The new airport project is being undertaken by a private firm with private funds with the total cost to be amortized and paid for from the revenues to be generated from the airport use.

The Babelthaup road project is to be paid from the Compact funds, details to be worked out between the U.S. and Palau.

The various capital improvement project for the state governments, which are being undertaken by various Japanese Construction Companies, are obligations of the state governments involved and will be paid for by those states in accordance with their economic development plans and their appropriation laws and procedures.

The National Government, while supportive of these development, to date has not certified funds availability nor obligated any of its resources to any of these projects.

It is anticipated that after the implementation of the Compact and at the appropriate time these items will be included in the Unified National Budget as part of the Economic Development Plan for Palau.

It is important to note that had the Compact been implemented as originally envisioned, we would have not proceeded with these projects in this manner. These projects are vital to the economic development of Palau and have been held back too long awaiting implementation of the Compact, and we feel that further delay will only hurt Palau in the long run.

United States Department of State

Washington, D.C. 20520

FEB 25 1988

Dear Mr. Chairman:

Thank you for your letter of February 1, to James D. Berg, Director of the Office of Freely Associated State Affairs, submitting questions for the record of the hearing you conducted on January 28, 1988, regarding the Compact of Free Association for Palau. The State Department's response to each of those questions is attached.

I hope these responses are helpful to the Committee in its consideration of the President's proposed joint resolution which would authorize entry into force of the Compact.

Sincerely,

J. Edward Fox
Assistant Secretary
Legislative Affairs

Enclosure:

Q's and A's.

The Honorable
J. Bennett Johnston, Chairman,
Committee on Energy and Natural Resources,
United States Senate.

STATE DEPARTMENT ANSWERS TO QUESTIONS FOR THE RECORD OF THE HEARING CONDUCTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON THE COMPACT OF FREE ASSOCIATION FOR PALAU JANUARY 28, 1988

QUESTION 1. What would be the effect on U.S. rights under the Compact if, following Compact implementation, a Palauan court rules that the approval process was unconstitutional?

ANSWER: Section 411 of the Compact provides that the Compact cannot come into effect until, inter alia, the Government of Palau approves it in accordance with its constitutional processes. If, prior to the time that the Compact entered into force, a Palauan court determined that the Government of Palau had not constitutionally approved it, the Compact could not enter into force until the Government of Palau remedied whatever infirmity its courts had found to exist.

A very different result would obtain, however, were a Palauan court to make the same determination after the Compact entered into force. Under the Vienna Convention on the Law of Treaties, which sets forth a generally accepted body of international rules that govern all aspects of treaty making and treaty observance, such a determination would have no effect on the international obligations created by the Compact. Specifically, Article 27 of the Vienna Convention states that "(a) party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to Article 46." Article 46 provides that:

> 1. A State may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.
>
> 2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

The Government of Palau has authoritatively expressed its willingness to be bound by the Compact. This expression of consent, in the form of the August 29, 1987, letter from President Salii, cannot be regarded as manifestly in violation of internal Palauan law. Indeed, President Salii, acting in accordance with the general foreign affairs powers entrusted to him under the Palauan constitution, certified in his letter that his government had approved the Compact in accordance with its

constitutional process. Hence, after the Compact comes into effect, Palau could not invoke a contrary ruling by a Palauan court as grounds for refusal to abide by the terms of the Compact.

Such a ruling would, of course, create domestic legal issues for Palau. Such issues would not, however, affect the rights and obligations established bilaterally between the U.S. Government and the Government of Palau under the Compact. Palau instead would be required under international law to take all internal measures that were necessary in order to meet its obligations under the Compact.

Included here as Attachment A is a legal opinion by the Attorney General of Palau which is consistent with the preceding analysis and suggests that both governments understand the effect of such a ruling after the Compact is in effect.

QUESTION 2. In May of 1983, a Note Verbale, which originated in the Office for Micronesian Status Negotiations, was passed by the U.S. State Department to the British Government regarding a power plant project proposed for Palau by the British firm IPSECO. The Banks which guaranteed the loan for this project took that note as U.S. government encouragement for the project. Is that what OMSN intended to communicate -- encouragement for the project?

The Note states:

> "The Government of the United States would view the application of the operational funds (of the Compact) and a reasonable portion of the capital funds to a project for the proposed IPSECO project as being consistent with the intent of the Compact"
>
> "...the Government of Palau should be able to meet its scheduled debt-service obligations in light of present and future funds granted to the Government of Palau by the USG."

ANSWER: The purpose of the Note Verbale was to provide the Palauans, IPSECO, the bankers and the Government of Great Britain (which was expected to guarantee the loans through its Export Credit Guarantee Department should the project qualify) with an accurate statement of the funding expected to be available to Palau during the trusteeship and under the Compact for purposes which might include the proposed power plant project. The note explicitly stated that the use of Compact funds consistent with the terms of the Compact would be a matter within the authority of the Government of Palau, and that the availability and use of funds during the trusteeship was subject to Congressional appropriation authority. The cable which transmitted the note also reported on the meetings with IPSECO and the Palauans in which OMSN made it clear that the United States Government had no legislative authority to make any guarantees with respect to the specific project. That cable is included as Attachment B.

The bankers and the ECGD had requested that the United States guarantee the loans for the project. OMSN informed the parties that there was no authority under United States law for us to make such a guarantee, and that the Administration would not seek such authority or recommend that such guarantees otherwise be made. In addition to communicating this position to the parties, the conduct of the United States in refusing to make the guarantees as requested by the bankers and ECGD was an objective statement in itself of United States policy that the loan was a matter between Palau and the British parties.

It was in this context that the Palauans and those with whom they were dealing in London requested that the United States at least provide an official statement of United States funding commitments, and the allocation of authority with respect thereto, under the trusteeship and the Compact. The purpose of the note was to provide such a statement. The intention was to make a neutral statement which neither discouraged nor encouraged the parties. The statements quoted in your question must be read in the context of the note, and were accurate and reasonable.

The purpose of the Note Verbale was, then, to confirm the fact that it is consistent with the intent of the Compact for Palau to make its own decisions on how to allocate Compact funds. Aside from this government's refusal to guarantee the loans, the message to the British government and the Note Verbale contained no information not otherwise available by reading the Compact.

QUESTION 3. Approximately a year before this note was passed to the British Government the Senate Appropriations Subcommittee for Interior and Related Agencies held a hearing, at which I believe you were in attendance, in which the Committee questioned the ability of the Trust Territory governments to pay for the IPSECO projects. Moreover, Committee staff notified the U.S. and Palauan officials of Congressional opposition to these proposals. Were these facts communicated to the British banks, and if not, why not?

ANSWER: To my knowledge, the Administration, including OMSN and OTIA of the Interior Department, had no direct dealings with the guaranteeing bankers prior to the time when the final contracts and loan documents were signed in 1983. We did communicate our own concerns, and our awareness of Congressional opposition, to the Palauans and IPSECO. However, the original IPSECO proposal had been developed in 1981, and no action to prohibit Palau from proceeding with the project was taken by the High Commissioner, the U.S. Executive branch or Congress.

The High Commissioner suspended legislation which would have waived Palau's sovereign immunity, and IPSECO and the bankers were aware of that action. OMSN had refused to seek United States guarantees for the loans, and IPSECO and the bankers were aware of that action. But the United States did not intervene directly to stop Palau from doing something that many people thought was not in Palau's best interests. This was the first project undertaken by Palau since recognition of its constitutional government by the United States.

OMSN was one of the first United States Government organizations to go on record with reservations about the IPSECO project. One and one-half years before the Committee hearing referred to in this question, OMSN's Status Liaison Officer (SLNO), located in Saipan but with reporting responsibility for Palau, sent in a classified cable to OMSN and OTIA describing the problems with the proposed project. At OMSN's instructions, the SLNO had raised our concerns with Palauan leaders, with the results reported in that cable, which has been declassified and is included as Attachment C.

The decision of OMSN and OTIA to provide the Note Verbale was based, in part, on a desire to avoid allegations, implied by Palauan reactions reported in the cable, that the United States was seeking to terminate the project in order to perpetuate Palau's state of economic and developmental dependence upon the United States.

Attachments:

A. Palau Attorney General's Memorandum of April 11, 1986;
B. State 145094 of May 25, 1983 on IPSECO/Power Plant;
C. Status LNO 020 via CINCPACREP GUAM of January 28, 1982.

33 ATTACHMENT A

REPUBLIC OF PALAU
OFFICE OF THE ATTORNEY GENERAL
P.O. Box 100
Koror, Palau 96940
Phone:481
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Attorney General:
Russell E. Weller, Jr.

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Philip D. Isaac
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Gillian T. Tellames
Yosiharu Ueda

11 April 1986
Serial: AG297

MEMORANDUM

TO: President, Republic of Palau

FROM: Attorney General

SUBJECT: Revised Opinion

In response to your request that expand our earlier opinion on the Compact of Free Association which was the subject of the February 21, 1986 referendum, the following information is provided. This revision does not change our earlier opinion. Rather, it only includes an expanded discussion of some of the points which you raised.

Question Presented

Question No. 1: Was the Compact of Free Association ratified by the vote taken in referendum on February 21, 1986, the results of such vote being that the "yes" votes constituted more than 50% but less than 75%?

Question No. 2: Do the provisions of Section 324 of the Compact of Free Association constitute an improper waiver of the Constitutional prohibition against the use of nuclear power plants within the jurisdiction of Palau as set forth in Article XII, Section 6 of the Constitution?

Answers

Answer No. 1. Yes. See Discussion.

Answer No. 2. No. See Discussion.

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Discussion

It is clear that under most circumstances only a simple majority of the voters in a referendum is required to approve a treaty, such as the Compact of Free Association. See Article II, Section 3, Constitution. However, that same section of the Constitution requires a 75% voter approval when the proposed treaty authorizes the "...use, testing, storage, or disposal of nuclear, toxic, chemical, gas, or biological weapons intended for use in warfare..." (Emphasis Added).

It is clear from a reading of Section 324 of the Compact of Free Association that there is no authorization of any type for the use, testing, storage or disposal of nuclear weapons, or the other types of weapons designated in the Constitution, in the territory of the Republic of Palau. Thus, there is no 75% approval of the Compact required by Article II, Section 3 of the Constitution, and the provisions of that section were fully complied with upon approval of the Compact by the Olbiil Era Kelulau in the manner prescribed and by the approval of more than 50% of the voters.

Some individuals have put forth the proposition that since Section 324 of the Compact authorizes the United States to operate nuclear powered vessels within the waters of the Republic, and that since such vessels are powered by a "nuclear power plant", a vote of 75% was required to approve the Compact. As noted above, this argument is based upon an erroneous reading of Article II, Section 3, Constitution, since that section refers only to, and applies only to, weapons.

We do note that Article XIII, Section 6, Constitution, refers to nuclear power plants. That Section reads:

> Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste materials therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three-fourths (3/4) of the votes cast in a referendum submitted on this specific question."

The first comment that needs to be made is that this section of the Constitution does not have any applicability to the approval or disapproval of the Compact. The Compact approval procedure is governed exclusively by Article II, Section 3, Constitution. As noted above, it is clear that the vote in referendum on the Compact complied with the dictates of Article II, Section 3, and that the Compact is approved in accord with the Constitutional requirements of the Republic of Palau.

Article XIII, Section 6, in its relevant provisions, prohibits the use of nuclear power plants in the Republic, unless that use is approved by 3/4 of the votes cast in a referendum on that particular question. This provision applies to actions by the Government of Palau or persons under Palauan jurisdiction engaged in activities not otherwise authorized pursuant to the Constitution and laws of Palau. It would be an anomaly to apply Article XIII, Section 6 to a foreign government carrying out major governmental powers as authorized under a treaty approved in accordance with Article II, Section 3.

Once the Chief Executive has signed an agreement and notified the other government concerned that the treaty has been ratified by the Olbiil Era Kelulau and the people in accordance with the treaty ratification provisions of Article II, Section 3 of the Constitution, both such actions being an exercise of the President's foreign affairs authority under Article VIII, Section 7 of the Constitution, the application of a provision such as Article XIII, Section 6, which does not govern treaty approval, in this case would operate to nullify Article II, Section 3. As noted below, no provision of the Constitution can be interpreted as nullifying another provision.

Moreover, we think that it is clear that this prohibition was intended to be, and is, a prohibition against ground based, permanent, nuclear power plants, the type of plant that produces electricity for commercial consumption. The prohibition was not intended to encompass and does not apply to the propulsion system of a ship which is not ground based, is not a permanent structure inside the jurisdiction of Palau and which is totally self contained.

The Constitutional Convention spent many hours discussing the prohibitions expressed concerning dangerous materials. It is clear from the Journal of the Constitutional Convention that ship based nuclear propulsion plants were not considered within the context of the final prohibition against nuclear power plants.

In the unlikely event that Article XIII, Section 6 were held to apply to shipboard propulsion systems, we find that Article XIII, Section 6 would still not have any effect or application on the approval of the Compact. Rather, we would be placed in the position of having a conflict between the provisions of the Compact as a validly approved treaty, and a judicial interpretation that the approval of the Compact did not permit the operation of nuclear powered vessels because of Article XIII, Section 6 of Palau's Constitution.

We note that Article XIII, Section 6 prohibits the actual use of nuclear power plants, not permission to use nuclear power plants. Thus, until there is an actual, or at least imminent, use of a nuclear power plant within the sovereign territory of Palau, there is no conflict, and this section of the Constitution cannot be applicable. If this section were found to apply to shipboard propulsion systems, and if there was a vessel which was nuclear powered operating in or preparing to enter the waters of Palau, then there would be a situation which could give rise to a judicial application, or in our view misapplication, of Article XIII, Section 6. In that unlikely event, the Constitutional procedures which could be followed to determine if the government of Palau would be able to consent affirmatively to operation of a nuclear powered vessel would include a vote pursuant to Article XII, Section 6 in which the people of Palau would be able to approve or disapprove such use.

Finally, even if it were held that approval of the Compact under Article II, Section 3 was not valid as to the nuclear powered vessel provision of Section 324, we find that the drafters of the Constitution clearly considered the possibility of such a conflict, and provided an additional mechanism to deal with it. That procedure is set out in Article XV, Section 11, Constitution:

> Any amendment to this Constitution proposed for the purpose of avoiding inconsistency with the Compact of Free Association shall require the approval by a majority of votes cast on that amendment and in not less than three fourths of the states. Such amendment shall remain in effect only as long as the inconsistency continues.

This Section makes clear a number of factors important to the instant case.

First and foremost this section clearly contemplates on its face that the Constitution and the Compact can both exit at the same time even when there is an inconsistency between them. From this, it is clear that the mere existence of a conflict between Article XIII, Section 6 of the Constitution and Section 324 of the Compact would have absolutely no effect upon the approval of the Compact itself. Article XV, Section 11 refers to the Compact of Free Association. It does not refer to a "proposed" Compact of Free Association. The language most clearly indicates that the inconsistency contemplated is between present, not proposed, documents.

If we were to make the assumption that an inconsistency between the Constitution and the Compact renders the approval process of the Compact null and void, then Article XV, Section 11, would be a nullity, proscribing a remedy for a situation that cannot arise. It is axiomatic that all provisions of the Constitution must be interpreted so as to give them meaning and any interpretation that renders the language a nullity must be rejected.

There is no question that the Constitution is the supreme law of the Republic of Palau. The remedy for the inconsistency contemplated by Article XV, Section 11 is amendment to the Constitution. If were held that there is a present conflict between Article XIII, Section 6, Constitution, and Section 324, Compact, then the dictates

of the Constitution would prevail, and until such time as the Constitution were amended pursuant to the provisions of Article XV, Section 11, both the Constitution and the Compact would exist. The effect of the inconsistency would be that the provisions of section 324 of the Compact relating to nuclear powered warships would be stayed. However, for the reasons stated above, we feel that such a holding is extremely unlikely, would be erroneous, and would be reversed on appeal.

In addition, we note that under customary international law and the Vienna Convention on the Law of Treaties a sovereign government cannot generally assert its internal constitution and laws as a justification for not performing its obligations under a treaty. The exception is where the other government participating in the treaty was on notice when it entered into the treaty of the conflicting requirements of the non-performing government's internal laws. (These principles are set forth in Articles 27 and 46 of the Vienna Convention and represent the current international practice of states). While the United States, as Administering Authority under the trusteeship, could be regarded as being on notice of the requirements of Article II, Section 6 of our Constitution, application of Article XII, Section 6 is merely a matter of speculation based on an interpretation of the Constitution which the Government of Palau has expressly rejected.

The United States cannot be expected to rely upon, or accept that it is on notice of, an interpretation of Palau's Constitution which is different from that of the Government of Palau, and which is merely a matter of conjecture and opinion at this point. Indeed, with certification by the Government of Palau that the approval process has been completed in accordance with the Constitution, the United States is on notice that no internal constitutional or legal obstacle exists to full Compact implementation by both our governments.

Because the Constitution is the supreme law of the land, the Government of Palau would be bound by a judicial interpretation that approval of the nuclear powered vessel provision of Compact Section 324 was subject to approval under Article XIII, Section 6 of the Constitution. However, such a judicial ruling would not prevent the United States from claiming that it has the right to operate nuclear powered vessels pursuant to Section 324 of the Compact as approved under Article II, Section 3 of the Constitution. Thus, if Palau informs the United States after the effective date of the Compact that its court has interpreted the Constitution in a manner different than the government of Palau had interpreted it during the negotiations, and on that basis Palau notifies the United States that the nuclear powered vessel clause is not effective in the view of the Government of Palau, it can be expected that the United States will not recognise any restriction on its right to operate nuclear powered vessels in Palau by virtue of such a change in Palau's internal legal position. Moreover, it can be assumed that the United States will reserve the right to treat any action by Palau to prevent operation of nuclear powered vessels as a breach of the Compact. If this occurs the dispute procedures of Title Three of the Compact would be the logical avenue for consultations, and the matter would have to be resolved on a government-to-government basis in accordance with international law.

In summary, we find that Article II, Section 3, Constitution, is the only provision of the Constitution which governs the approval of the Compact of Free Association, and that the Compact of Free Association has been approved in accord with those provisions. It is our opinion that Article XIII, Section 6, Constitution, has no applicability to the approval of the Compact of Free Association. We believe that Article XIII, Section 6 does not apply to shipboard propulsion systems. We further believe that if Article XIII, Section were held to apply to vessel propulsion systems, such application would have no effect upon the approval of the Compact of Free Association.

I hope that this adequately addresses the questions which you raised. If you have further questions, please let me know.

Russell S. Weller, Jr.

UNCLASSIFIED

ATTACHMENT B

Department of Sta

PAGE 01 OF 02 STATE 145094

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FM SECSTATE WASHDC
TO AMEMBASSY LONDON IMMEDIATE
INFO USMISSION USUN NEW YORK PRIORITY
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HICOMTERPACIS SAIPAN PRIORITY
CINCPAC HONOLULU HI PRIORITY 0000

UNCLAS STATE 145094

E.O. 12356: N/A
TAGS: BEXP, EFIN, ENRG, UK, RP
SUBJECT: IPSECO/PALAU POWER PLANT DISCUSSIONS

2) NOTAL

1. FOLLOWING IS BACKGROUND INFORMATION ON THE PROPOSED ARRANGEMENT BETWEEN BRITISH FIRM INTERNATIONAL POWER SYSTEMS COMPANY (IPSECO) AND THE GOVERNMENT OF PALAU WITH RESPECT TO THE PROVISION BY THE FORMER OF ELECTRICAL POWER GENERATION UNITS. PALAU IS A COMPONENT OF THE TRUST TERRITORY OF THE PACIFIC ISLANDS NOW ADMINISTERED BY THE UNITED STATES BUT SOON TO ENTER INTO A FREE ASSOCIATION RELATIONSHIP WITH THE U.S. FOLLOWING THE TRUSTEESHIP. IPSECO INTENDS TO LEND FUNDS TO PALAU FOR FINANCING OF THE POWER-PLANT PROJECT, WHICH LOAN WOULD BE GUARANTEED BY THE BRITISH EXPORT CREDIT GUARANTEE DEPARTMENT (ECGD). WE UNDERSTAND THAT ECGD AND THE FINANCIAL INSTITUTIONS INVOLVED WOULD PREFER A THIRD-PARTY GUARANTEE OF THE LOAN. PREVIOUS COMMUNICATIONS TO HMG FROM USG HAVE CONVEYED FACT THAT USG AS A MATTER OF POLICY CAN NOT GUARANTEE CREDIT OR UNDERWRITE DEFAULT FOR GOVERNMENTS OR INDIVIDUALS DURING THE TRUSTEESHIP OR UNDER THE PENDING COMPACT OF FREE ASSOCIATION.

2. PALAU VICE PRESIDENT ALFONSO OITERONG, AND PALAU TRADE AMBASSADOR LAZARUS SALII MET IN WASHINGTON ON 10 MAY WITH DEPARTMENT OF THE INTERIOR ASSISTANT SECRETARY PEDRO SAN JUAN AND PRESIDENTIAL NEGOTIATOR AMBASSADOR FRED ZEDER TO PROVIDE BACKGROUND AND RATIONALE FOR IPSECO ARRANGEMENT. IPSECO PROJECT MANAGER GORDON MORRIE, A BRITISH NATIONAL, ALSO ATTENDED. AT MEETING, USG OFFICIALS REITERATED THAT RECENT SUSPENSION OF PALAU LEGISLATION BY UNITED STATES HIGH COMMISSIONER OF THE TRUST TERRITORY WOULD NOT BE REVERSED. SUSPENDED LEGISLATION WOULD, INTER ALIA, HAVE WAIVED THE GOVERNMENT OF PALAU'S IMMUNITY TO SUIT IN LOAN-DEFAULT SITUATION. USG OFFICIALS ALSO REITERATED THAT U.S. HAS NO LEGISLATIVE AUTHORITY TO GUARANTEE PROPOSED LOAN NOW OR AFTER THE COMPACT OF FREE ASSOCIATION TAKES EFFECT. PALAU AND IPSECO REPRESENTATIVES ASKED THAT USG OFFICIALS RECONSIDER POSITION OR CONSIDER OTHER WAYS THAT ARRANGEMENT MIGHT PROCEED. FOLLOWING PARAGRAPHS, THE SUBSTANCE OF WHICH HAS BEEN DISCUSSED WITH PALAU OFFICIALS, CONSTITUTES RESULTS OF THAT RECONSIDERATION.

3. EMBASSY IS REQUESTED TO MAKE FOLLOWING TWO PARAGRAPHS AVAILABLE TO HMG, IN FORM OF NOTE VERBALE IF APPROPRIATE, WITH THE EXPECTATION THAT HMG WILL IN TURN INFORM THOSE BRITISH PARTIES, INCLUDING ECGD, INVOLVED IN THE PALAU-IPSECO DISCUSSIONS TAKING PLACE THIS WEEK IN LONDON. WE HAVE MADE CONTENTS OF PARAGRAPH 4 AND 5 KNOWN TO UK EMBOFF ROGER FRENCH IN WASHINGTON.

4. THE GOVERNMENT OF THE UNITED STATES AND THE GOVERNMENT OF PALAU HAVE NEGOTIATED A COMPACT OF FREE ASSOCIATION WHICH WAS APPROVED BY THE PEOPLE OF PALAU IN A FEBRUARY 10, 1983 PLEBISCITE. AFTER ITS APPROVAL BY THE GOVERNMENT OF PALAU, IT WILL BE SUBMITTED TO THE UNITED STATES CONGRESS FOR APPROVAL. IT IS CONTEMPLATED THAT THE COMPACT WILL COME INTO EFFECT SIMULTANEOUSLY WITH THE TERMINATION OF THE TRUSTEESHIP AGREEMENT. THE COMPACT CONTAINS PROVISION FOR DIRECT GRANT ASSISTANCE TO THE GOVERNMENT OF PALAU FROM THE GOVERNMENT OF THE UNITED STATES. THIS ASSISTANCE WILL TAKE THE FORM OF ANNUAL PAYMENTS, SOME OF WHICH ARE PROGRAMMED FOR GENERAL GOVERNMENT OPERATIONS AND SOME OF WHICH ARE PROGRAMMED FOR CAPITAL AND ECONOMIC DEVELOPMENT EXPENSES. IN THE FIRST CATEGORY, THERE WILL BE PROVIDED THE AMOUNT OF 28 MILLION DOLLARS TO BE DISBURSED AT THE RATE OF 2 MILLION DOLLARS PER YEAR FOR 14 YEARS TO BE USED BY THE GOVERNMENT OF PALAU FOR ENERGY-RELATED ACTIVITIES. IN THE SECOND CATEGORY, THERE WILL BE AVAILABLE TO PALAU $36 MILLION DURING THE FIRST YEAR OF THE FREE ASSOCIATION RELATIONSHIP FOR CAPITAL NEEDS. THE GOVERNMENT OF PALAU WILL HAVE FULL AUTHORITY TO DETERMINE THE APPLICATION OF BOTH CATEGORIES OF FUNDS. THE GOVERNMENT OF THE UNITED STATES WOULD VIEW THE APPLICATION OF THE OPERATIONAL FUNDS AND A REASONABLE PORTION OF THE CAPITAL FUNDS TO A PROJECT FOR THE PROPOSED IPSECO PROJECT AS BEING CONSISTENT WITH THE INTENT OF THE COMPACT. SIMILARLY, DURING THE REMAINING PERIOD OF THE TRUSTEESHIP BEFORE THE COMPACT COMES INTO EFFECT, PALAU RECEIVES FROM THE UNITED STATES, THROUGH THE DEPARTMENT OF THE INTERIOR, ANNUAL FUNDING OF WHICH A PORTION IS APPROPRIATED FOR ENERGY-RELATED OPERATIONS AND MAINTENANCE. THESE FUNDS ARE NOW BEING USED TO OPERATE AND MAINTAIN PALAU'S PRESENT POWER-GENERATION UNITS. WERE PALAU TO USE THESE OPERATIONAL FUNDS FOR THE PROPOSED IPSECO PROJECT, SUCH USE WOULD BE CONSIDERED BY THE U.S. AS CONSISTENT WITH THE GENERAL PURPOSE FOR WHICH THESE FUNDS WERE PROVIDED. DURING THE TRUSTEESHIP PERIOD, OPERATIONS AND MAINTENANCE FUNDS ARE SUBJECT TO THE APPROPRIATION AUTHORITY OF THE UNITED STATES CONGRESS. HISTORICALLY, THE CONGRESS HAS APPROPRIATED TO PALAU SUMS RANGING FROM $1.5 MILLION TO $2 MILLION PER YEAR FOR THIS PURPOSE OVER THE PAST FEW YEARS. IT IS THE UNDERSTANDING OF THE USG THAT THE FIRST INTEREST PAYMENT FROM PALAU FOR THE IPSECO PROJECT WILL BECOME DUE 27 MONTHS FOLLOWING SIGNING OF THE CONTRACTUAL PROVISIONS. IF IN THE JUDGMENT OF HMG AND THE LENDING INSTITUTIONS THE PROPOSED PROJECT QUALIFIES FOR THE REQUESTED LEVEL OF FINANCIAL ACCOMODATION, THE GOVERNMENT OF PALAU SHOULD BE ABLE TO MEET ITS SCHEDULED DEBT-SERVICE OBLIGATIONS IN LIGHT OF PRESENT AND FUTURE FUNDS GRANTED TO THE GOVERNMENT OF PALAU BY THE USG.

5. AMBASSADOR ZEDER AND ASSISTANT SECRETARY SANJUAN WISH TO CONVEY THEIR SINCERE APPRECIATION TO HMG FOR THE KIND INVITATION TO COME TO LONDON THIS WEEK FOR FURTHER DISCUSSIONS OF THIS AND RELATED SUBJECTS AND TO EXPRESS GENUINE REGRET THAT THEIR SCHEDULES WILL NOT PERMIT ACCEPTANCE AT THIS TIME. FURTHER, THEY SHOULD LIKE FORMALLY TO ACKNOWLEDGE THEIR GRATITUDE FOR THE INTEREST HMG AND OTHERS HAVE TAKEN IN THE GOVERNMENT OF PALAU. THE USG IS CONCERNED WITH THE WELFARE OF THE PEOPLE OF PALAU AND RECOGNIZES THE IMPORTANCE OF ADEQUATE ELECTRICAL POWER FOR THE ISLANDS.

UNCLASSIFIED
Department of State

OUTGOING
TELEGRAM

PAGE 02 OF 02
PLEASE BE ASSURED THAT THE OFFICE FOR MICRONESIAN STATUS NEGOTIATIONS AND THE OFFICE OF THE ASSISTANT SECRETARY OF THE INTERIOR FOR TERRITORIAL AND INTERNATIONAL AFFAIRS FULLY SUPPORT THE EFFORTS OF THE GOVERNMENT OF PALAU TO IMPROVE ITS PRESENT POWER-GENERATING CAPABILITY.

6. AMBASSADOR ZEDER SENDS. SHULTZ

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CONFIDENTIAL

UNCLASS DEPARTMENT OF STATE

ATTACHMENT C

PAGE 01 0306462 2911

P 2804362 JAN 82
FM CINCPACREP GUAM
TO SECSTATE WASHINGTON DC
INFO AMEMBASSY LONDON
CINCPAC HONOLULU HI
USCG KIRTZ-HILL GUAM

UNCLASSIFIED

FROM STATUS LNO #28
STATE NCH 4916
E.O. 12065: GDS-1/18/88 (YELLMAN, DONALD J.) OR-M
TAGS: EMIN, PG, UK
SUBJ: PALAUAN PLANS TO BUY BRITISH POWER PLANT
DEPARTMENT PASS INTERIOR FOR OMSN/TIA

1. CONFIDENTIAL ENTIRE TEXT
2. IN A LETTER DATED JANUARY 11, 1982, FROM PALAU'S PRESIDENT REMELIK RICOH WAS ADVISED OF PLANNED TRAVEL TO LONDON BY PALAUAN DELEGATION TO DISCUSS QUOTE FINANCING ALTERNATIVE UNQUOTE FOR IPSECO'S POWER PLANT. SIZE OF DELEGATION IS CONSISTENT WITH

PAGE 02 RUNGSGG1388 C O N F I D E N T I A L
PAGE 02 RUNGSGG2578 C O N F I D E N T I A L
NORMAL PALAUAN PRACTICE, BUT IN THIS CASE IPSECO IS PICKING UP ALL EXPENSES. PALAUAN CONTACTS WITH IPSECO REPS HAVE BEEN FREQUENT; THE ONLY DIFFERENCE THIS TIME IS THE VENUE. PALAUANS CONSIDER THESE CONTACTS TO BE WITH PRIVATE BUSINESS INTERESTS, ALTHOUGH THEY HAVE NEVER TRIED TO HIDE THEM FROM US. STATUS LNO AGREES THAT CONTACTS WITH BRIT GOVT OFFICIALS WERE PROBABLY SUGGESTED BY IPSECO, NOT PALAUANS, AND FURTHER AGREES THAT SUCH CONTACTS WOULD BE INAPPROPRIAT PALAUANS ARE NOT TRYING TO CHALLENGE US ON THIS ONE.
3. TIME IS APPROACHING WHEN USG MUST DECIDE WHETHER WE WILL SERIOUSLY OBJECT TO THIS DEAL, OR LET EVENTS TAKE THEIR COURSE. STATUS LNO HAS HAD A NUMBER OF CONVERSATION WITH PALAUAN LEADERS ON THIS SUBJECT (INCLUDING PRESIDENT REMELIIK AND SPECIAL ADVISER GIBBONS), NOTHING THE AWESOME LIABILITIES PALAU WOULD INCUR, AND AN EXTENSIVE DISCUSSION WITH IPSECO PROJECTS DIRECTIO GRAHAM P. PAGENCE, WHILE ON A VISIT TO PALAU IN SEPTEMBER, 1981. PALAUANS INSIST THEY NEED THIS PROJECT FOR THEIR ECONOMIC DEVELOPMENT, WHILE BRITISH PURVEYORS OF THE GENERATORS ARE SANGUINE ABOUT PAYMENT PROSPECTS. STATUS LNO IS IN NO POSITION TO DISPUTE PALAUAN CLAIM THAT USG PLANS TO UPGRADE PALAU'S POWER SYSTEM FALL SHORT OF NEEDS FOR ECONOMIC DEVELOPMENT,

PAGE 03 RUNGSGG1388 C O N F I D E N T I A L
NOR CAN WE ARGUE WITH CONVICTION THAT PALAU WILL BE UNABLE TO PAY
PAGE 03 RUNGSGG2578 C O N F I D E N T I A L
FOR THE BRITISH SYSTEM. NEITHER PALAUANS OR IPSECO REPS HAVE EVER LINKED COMPACT FUNDING TO PAYMENT FOR THE GENERATORS IN THESE CONVERSATIONS, AND IF IPSECO REPS BELIEVE A LINKAGE EXISTS THEY SHOULD BE CATEGORICALLY DISABUSED OF THIS NOTION.
PALAUANS BELIEVE REPAYMENT CAN BE ACCOMPLISHED BY PROCEEDS FROM SALE OF POWER, AND RESALE OF BUNKER C FUEL FROM TANK FARM THAT WILL ACCOMPANY GENERATOR PLANT. THEY HAVE THE OPTIMISM OF A YOUTHFUL NATION, AND IT IS IMPOSSIBLE TO CONVINCE THEM THEIR PLANS ARE UNREALISTIC.
4. DEPARTMENT'S INFO ON DEAL WITH WHICH IPSECO IS PUSHING THIS DEAL AGREES WITH STATUS LNO ASSESSMENT. WE BELIEVE, HOWEVER, THAT THERE IS MORE TO IT THAN THE SIMPLE SALE OF GENERATORS AND FUEL TANKS. WE UNDERSTAND THAT A 10 YEAR CONTRACT WITH BRITISH PETROLEUM TO SUPPLY BUNKER C AT AN AGREED PRICE WOULD BE PART OF THE CONTRACT. APART FROM THE OBVIOUS ADVANTAGE OF BEING ABLE TO DELIVER THE FUEL TO AT LEAST TWO MICRONESIAN LOCATIONS (MAJURO AND PALAU; IPSECO IS ALSO EYEBALLING POHNPEI, OR WOULD ASSURE THEMSELVES MARKETS FOR THIS RESIDUAL REFINERY PRODUCT FOR THE TEN YEAR PERIOD. WE UNDERSTAND,

PAGE 04 RUNGSGG1388 C O N F I D E N T I A L
FROM READING TRADE JOURNALS, THAT PRICES FOR BUNKER C ARE AS LIKELY TO GO DOWN AS UP DURING THAT PERIOD, AND THAT THERE IS A CURRENT OVERSUPPLY OF THE PRODUCT DUE IN PART TO DECLINE IN DEMAND FROM
PAGE 04 RUNGSGG2578 C O N F I D E N T I A L
SHIPPING TRADE.
5. USG MUST DECIDE WHETHER, UNDER OUR CONTINUING TRUSTEESHIP RESPONSIBILITIES, IT IS OUR DUTY TO INSURE SENSIBLE PALAUAN FINANCIAL MANAGEMENT IN THIS INSTANCE AND, IN EFFECT, PROTECT THE PALAUANS FROM THEMSELVES. IN ORDER TO MAKE THIS JUDGEMENT, IT MAY BE NECESSARY TO BECOME PRIVY TO ALL DETAILS OF THE NEGOTIATION, INCLUDIN THE PROPOSED CONTRACT ITSELF, WHEN STATUS LNO REQUESTED COPY OF THE CONTRACT IN DECEMBER 1981, HE WAS POLITELY INFORMED THAT NEGOTIATIONS WERE A PRIVATE BUSINESS DEAL STILL UNDER CONSIDERATION AND HENCE CONFIDENTIAL. UNDER THE CIRCUMSTANCES, IT MAY BE MORE PRODUCTIVE TO LEAN ON THE BRITISH TO OBTAIN THE INFO, ALTHOUGH STATUS LNO IS PREPARED TO INSIST ON PROVISION OF DOCUMENTS BY PALAUANS IF SO INSTRUCTED. IF, AFTER EVALUATION OF THE EVIDENCE, USG DECIDES TO OBJECT TO THE DEAL, WE SHOULD DO SO FORTHRIGHTLY AND QUICKLY, BUT WE SHOULD BE PREPARED FOR ACCUSATIONS THAT WE ARE HAMSTRINGING PALAU'S ECONOMIC DEVELOPMENT. CAUTIONARY COMMENTS

OBJECT

PAGE 05 RUNGSGG1388 C O N F I D E N T I A L
TO THE PALAUANS, BRITISH AND IPSECO SEEM SO FAR TO HAVE HAD NO EFFECT ON EVENTS, ALTHOUGH THE USG POSITION ON OUR OWN LIABILITY IS CLEAR. YELLMAN.

DECLASSIFIED/RELEASED ON DEC 5 1986 UNDER PROVISIONS OF E.O.12356 BY YNCS D.K.DOLAN, USN SPECIAL ASSISTANT, OMSN

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

MAR 8 1988

Honorable J. Bennett Johnston
Chairman
Committee on Energy and
Natural Resources
United States Senate
Washington, D.C. 20510 - 6150

Dear Mr. Chairman:

On February 1, 1988, you wrote asking that I answer two questions that were not asked during the January 28, 1988 hearing on the Palau Compact.

Enclosed are the questions and our answers.

Sincerely,

Larry Morgan
Director
Legislative and Public Affairs

Follow-up Questions
Palau Compact Hearing -- January 28, 1988

QUESTION 1. Will Palau be faced with the need to layoff government employees again this fiscal year, and if so, is there likely to be civil disturbance by furloughed workers as there was last year?

ANSWER: The president of Palau has certified Palau's approval of the Compact, and the Administration has sent draft legislation to the Congress that would permit implementation of the Compact. If the Congress acts promptly by enacting the draft legislation, Palau will have sufficient funds to avoid a financial crisis. If, however, the Compact is not approved by the Congress early this year, Palau has said that it will face financial crisis. The severity of the financial trouble and the exact measures that the Government of Palau would take to deal with it (e.g. possible furlough of employees) are unknown at this time, cannot be predicted, and subject to decision by Palau President Lazarus Salii. In any event, we are reviewing Palau budget projections, which we find are in need of careful analysis to determine exactly what is critical and what is not.

You raise the question of possible civil disturbance, should a financial crisis occur and should President Salii elect to furlough employees. Such things cannot be predicted with accuracy. The situation this year, however, would likely be different from last year. Last year the anger of Palau public employees was directed against the Palau OEK (national congress) for withholding its approval of the Compact. The public employees had ready access to their national congress, which meant that they could easily demonstrate their disapproval of lack of positive action by the OEK. This year, the United States Congress is the body that has not approved implementation of the Compact. The fact that Washington, D.C. is many thousands of miles away would likely dampen civil disobedience, although local demonstrations, noting congressional inaction, could occur. The prospect for civil disobedience is more remote.

QUESTION 2. Committee staff has requested that the Department be prepared to submit reprogramming of funds to mitigate the impact of a furlough. Is the Department prepared to do this in the event the Compact is not implemented?

ANSWER: No. The Administration has strongly recommended that Congress pass Compact implementing legislation. Assuming passage of such legislation, no reprogramming need be contemplated. It is possible that the deletion of certain expense items and the inclusion of additional revenue for 1988 will improves Palau's financial picture over 1987. Should finances become a troublesome issue for Palau, however, a decision to furlough employees would be made by Palau, not Washington. We, therefore, would not request a reprogramming.

APPENDIX II

Additional Material Submitted for the Record

TRANSMITTED FROM
Jan 22.88 13:10 (PALAU)

02.22.88 18:11 P.02 *PALWASHLND
P.03

REPUBLIC of PALAU

Office of the President

Lazarus E. Salii
President

P.O. Box 100, Koror, Palau 96940
Phone: 488/403 Telex: 728-8914

January 22, 1988
Serial: 35

Mrs. Gabriella Ngirmang
Koror State
Republic of Palau

Dear Mrs. Ngirmang:

In order to quiet such concerns as may exist with regard to this matter, the National Government, and I, as President of the Republic founded on constitutional principles which clearly embrace the rule of law, will steadfastly guarantee, within the limits of all resources available to us, to you and to anyone else concerned, safety of person and property should you or anyone else wish to bring any legal action with respect to Compact and the constitutionality of the processes by which it was approved by the Republic of Palau, its executive and legislative branches and its people.

Sincerely,

Lazarus E. Salii

TRANSMITTED FROM 02.22.88 18:11 P.03 *PALWASHLNO

REPUBLIC OF PALAU
Office of the Vice President
P.O. BOX 100, KOROR, REPUBLIC OF PALAU 96940

PHONE 702
TELEX 728-8814 VPROPHP
CABLE GOV'T PALAU

THOMAS O. REMENGESAU
Vice President/Minister of Justice

January 21, 1988
Serial: VP/MJ16-88

Honorable Santos Olikong
Speaker, House of Delegates
Second Olbiil Era Kelulau
P.O. Box 8
Koror, Republic of Palau 96940

Dear Speaker Olikong:

Your letter of 21 January, 1988, requesting "that the three Policemen currently assigned to provide security for the Speaker and his family continue to do so" during your absence of almost three weeks is hereby acknowledged.

In response to your above referenced request, please be assured that present Police security arrangement to protect yourself and your family shall be maintained. The Director of Public Safety, as instructed earlier shall continue to provide and assure the safety of your family and your residence. Such Police security and protection will continue for as long as necessary.

Reports from the Director of Public Safety indicate that, Police Officers assigned to provide security and protection to yourself, your family and residence has continued to do an excellent job by carrying out their assigned duties and responsibilities in a professional manner.

Sincerely yours,

Thomas O. Remengesau
Vice President/Minister of Justice
Republic of Palau

xc: President Lazarus E. Salii
Senator J. Bennett Johnston
Congressman Stephen J. Solarz
Congressman Ron de Lugo
Director, Bureau of Public Safety

REPUBLIC OF PALAU

Office of Minister of State

December 23, 1987

The Honorable Stephen J. Solarz
Chairman, Subcommittee on Asian and
Pacific Affairs
Committee on Foreign Affairs
A707 House Annex 1
Washington, DC 20515

Dear Mr. Chairman:

During the hearing on Palau Compact of Free Association before your Subcommittee on December 17, 1987, a concern was expressed for the need to provide security for House of Delegates Speaker Santos Olikong and his family.

Having been assigned by President Salii to handle the matter, it is my great pleasure to report to you positively on this matter at this time. Upon instruction of President Salii, Vice President Thomas Remengesau, who is also the Minister of Justice, informed me that round-the-clock security shall be provided for Speaker Olikong and his family effective Tuesday, December 22, 1987, coinciding with the arrival of Speaker Olikong from his trip to testify before the hearing.

Let me take this opportunity on behalf of the President and the people of Palau to wish you and your family the very best holiday season.

Sincerely,

John O. Ngiraked
Minister of State

January 25, 1988

The Honorable J. Bennett Johnston
Chairman, Committee on Energy
and Natural Resources
United States Senate
360 Dirksen Senate Building
Washington, DC 20510

Dear Mr. Chairman:

The Association of the Governors of Palau sent us to present this message from the Governors. I, Ngiratkel Etpison, the Chairman of the Association of the Governors along with Governor Maidesil Rechuld of Ngeremlengui State, Governor John K. Rechucher of Ngardmau State, Governor Elia Tulop of Ngiwal State, and Governor Remoket Tarimel of Ngarchelong State are here to personally present said message to your Committee.

The Association of the Governors of Palau is rather displeased about the unreasonable delay of the United States in implementing the Compact of Free Association with the United States. Such delay has caused chaotic economic, social, and political situation in Palau.

In the summer of 1987, we invited the delegation from the House Subcommittee on Interior and Insular Affairs to come to Palau and advise us of two basic questions which laid our course respecting the approval of the Compact of Free Association. They were: (a) whether the United States can allow reopening of the negotiation of the Compact; (b) whether the United States can give Palau supplemental funds for its 1987 budget or for future budget year while Palau pursues her negotiation or further work on the Compact of Free Association with the United States. Congressman De Lugo, Chairman of that delegation, responded very clearly in the negative to both questions. He further assured us that Palau must not continue to believe that it may receive something more in the Compact by prolonging its approval, and that financial crisis may be ended by implementing the Palau Compact which shall take effect soon after Palau approves it. Similar assurance had been given to us by Mr. James Berg, representative of the Executive Branch of the United States Government. We received these words of assurance and set out to work on the approval of the Compact in reliance thereon.

Consequently, on August 4, 1987, we amended our Constitution to require a simple majority to approve the Compact and on August 21, 1987, we approved the Compact accordingly. In September 1987, it was certified by the President of the Republic of Palau and was forwarded to the President of the United States for its final certification and implementation. Since then the Compact has not been implemented. It is still in the hands of the United States. On the contrary, we have been advised of several problems which may delay the Compact implementation. They are classified into the following categories: (a) IPSECO; (b) constitutionality of approval of the Compact; and (c) failure of the United States to carry out its responsibilities under the Trusteeship Agreement.

At the outset, the cited problems are clearly irrelevant to the approval and implementation of the Compact. IPSECO debt is Palau's responsibility to pay it. We do not shy away nor have we, at any time, deny this debt. We are still in the process of negotiating an out-of-court settlement. As to the approval of the Compact, the President of the Republic of Palau has already certified that it was approved pursuant to the Constitution and laws of Palau. People who initiated law suits to challenge the approval of the Compact voluntarily had their suits dismissed and withdrawn. Now there is no suit pending. Plaintiffs have submitted their statements to your Committee that they were not intimidated, were not afraid, and they dismissed their suit with free will. As to the last issue, while we agree that the United States was derelict of some of its responsibilities under the trusteeship, we do not agree that it was a total failure. We are proud of what we are today and the future political status that we are about to enter into. This is the result of the genuine and continued efforts of the United States in helping us. However, the time has passed and the Compact implementation should not be withheld at the expense of the United States mistakes under the Trusteeship.

We look to the United States for its good faith in this matter and urge it to implement the Compact as we discussed it, as we negotiated it, and as we agreed it. The problems which are now considered to be the major block to the implementation of the Compact were never understood and agreed to be the pre-condition to the implementation of the Compact.

Let it be clear that we, the governors, support the President of the Republic of Palau because he takes a strong stand and supportive of the early implementation of the Compact of Free Association with the United States. Such support for the President rests upon the wish of our constituents in our respective states.

Said wish of our people has been acknowledged, endorsed, and supported by the paramount chiefs of Palau, High Chief Ibedul and High Chief Reklai. This, in our traditional custom, shall be conclusive as to all people of Palau. Since the Charter of the United Nations and Trusteeship Agreement require giving due recognition to our traditional customs, and our contitution provides that the underlying principle of Palauan traditional customs supercedes enactments of the National Congress, but inferior to our Constitution, it may be appropriate for the United States to give due respect thereto. Article VI, Section 1 of the Constitution of the Republic of Palau provides that:

> "The Government shall take no action to prohibit or revoke the role or function of a traditional leader as recognized by custom and tradition which is not inconsistent with this Constitution, nor shall it prevent a traditional leader from being recognized, honored, or given formal or functional roles at any level of Government."

While it is true that women in a clan select and appoint a chief, their appointment is not recognized nor effective until the same is affirmed by the senior male members of a clan, "Rubaks," and accepted and approved by the Council of Chiefs, of the village where the clan resides. Once a senior male member of a clan, "Rubak," becomes a chief, he would be vested with a power and authority to speak for the clan, to manage the affairs of the clan, and to control land and other properties belonging to the clan. He alone is permitted to speak in a public place or village meeting house, "Abai," discuss and make decisions for the clan. Women are not allowed under our custom to speak on or for any matters concerning a clan. They are not even allowed to sit in a meeting house, "Abai" with "Rubaks" where a discussion is conducted on public issues.

Each state in Palau consists of several small villages. In each village, there are several clans whose head bear a chief title for his respective clan. Village decisions are made by the "council of village of chiefs" of that village called "Klobak." Among these chiefs, there is a village chief. He is the one that speaks and makes decisions for the people and the village. If his decisions become detrimental to the interest and welfare of the people of the village, it is the council of village chiefs who has the authority to set aside said decisions. Among the council of village chiefs, there is a chief for the entire state. The state chiefs, including the paramount chief Ibedul and Paramount Chief Reklai, constitute the "Council Chiefs of Palau." This body advises the President of the Republic of Palau on matters concerning Palau traditional customs. See Article VIII, Section 6 of the Constitution of the Republic of Palau. And Paramount Chief Ibedul and Paramount Chief Reklai speak for and on behalf of the people of Palau.

While women are not allowed to apeak for matters concerning the general welfare of the clan, they may speak of matters which fall within women's role in the clan or in the village. In this regard, Bilung (female counterpart of Chief Ibedul) and Ebil Reklai (female counterpart of Chief Reklai) could speak for the women in Palau. No other women could. This is traditional custom of Palau. One must note that our national government as well as state governments are organized pursuant to democratic principles taking for consideration our traditional customs. Hence, the underlying democratic principles of our government may not be strictly similar to that which is known and followed in the United States. It is the one which is flexible to work within and with our social structures and traditional customs.

The United States may invite anyone in Palau to come and speak of the facts surrounding his or her experience. But, for the United States to invite any women in Palau to speak on major national issues and disregards a decision by the two paramount chiefs of Palau does not only undermine our traditional customs, it is insulting to the traditional chiefs and leaders of Palau. Furthermore, the United States through certain members of the Congress have repeatedly suggested that the President or someone files a friendly suit to clear up the constitutional issue respecting

the recent approval of the Compact. Again, this is urging the people of Palau to violate their traditional customs: to dishonor our traditional chiefs, and to ignore and disregard their role and functions recognized by our traditional customs. And being as such, it is totally unacceptable solution. Where the paramount chiefs and the President of Palau have reconciled on matters of public interest, the people of Palau accept such reconciliation even if some still disagree with the result of the reconciliation.

We the governors wish to impress upon the Congress and the United States our desire to keep and protect our traditional customs. And in this regard, we respectfully ask the Congress to give due respect thereto. We promised to give to our people the Compact of Free Association they always wanted. And this, we shall give to our people whether with the United States or with another country. And we wish to lay to rest any feeling which may sugggest the possibility of Commonwealth status and assure you that the Commonwealth status is not, and will never be, the choice of the people of Palau. This has been made clear in the past plebiscites.

There may be certain members of the Congress, who seek delay of the implementation of the Compact and are preferring a supplemental of $3.5 million for Palau. We wish also to make it clear that we do not support the acquisition of $3.5 million as supplemental to our 1988 fiscal year budget. If 1987 was troublesome, 1988 around April, Palau will again crash. This $3.5 million will only be used to avoid the furlough of our national government employees and associated difficulties and keep the national government maintain its daily operation. It does not help pay the daily operational expenses of the state governments nor does it help develop our local economy: A temporary relief at a status quo. We reject this as a means of prolonging our dependency and colonialism. Instead of supplemental, this year or any other year, the Compact provides long-term solution. We therefore support its early implementation.

Mr. Chairman, we have appeared before the House Foreign Affairs Subcommittee on Asian and Pacific Affairs and now we appear before your Committee. We understand that there will be another hearing before the House Subcommittee on the Interior and Insular Affairs. However, said hearing has not been schduled and we have no idea as to when it might be. We believe that we have adquately presented to the Congress of the United States a clear view of the position of the governors of Palau. There is nothing that we would add to what we have presented to this Congress. Therefore, when we leave this hearing we may not come back, but we will be looking forward to hearing from the United States soon respecting the early implementation of the Palau Compact of Free Association with the United States.

Respectfully Submitted,

Association of the Governors
Republic of Palau

Signed by:

Governor Ngiratkel Etpison
Chairman, Association of Governors

Governor Maidesil Rechuld
Ngeremlengui State

Governor John K. Rechucher
Ngardmau State

Governor Elia Tulop
Ngiwal State

Governor Remoket Tarimel
Ngarchelong State

January 21, 1988

Senator Bennett Johnston
Chairman, Committee on Energy and Natural Resources
The Senate
US Congress
Capitol Hill, Washington, D. C.

Dear Mr. Chairman:

It is my distinct pleasure and honor to respond to your invitation to appear and testify in regards to the Compact of Free Association between the United States of America and the Republic of Palau. Unfortunately, I am unable to travel to Washington, D. C. I hope this short letter fully expresses my position.

I am fully aware that this committee wishes to know my feelings regarding the case filed in which I was one of the named Plaintiffs relating to the approval of the Compact of Free Association which, as a matter of record, was settled and dismissed. I had instigated that lawsuit as I firmly believed in the cause for which it was filed. However, after a long and very conscientious discussion between myself and my brother, The Ibedul, and out of respect for his position in the community as well as that of the President, I agreed to dismiss the case. The political realities at that time which lead Ibedul to recommend that I agree to the settlement agreement he made with the President of the Republic of Palau were understandable and, even in retrospect, reasonable.

I thank you as well as the members of the committee for this opportunity to present my views and I hope I have in a small way contributed to the success of your deliberations.

Sincerely yours,

Alexander Merep

FISH 'N FINS
TORIBIONG CO. • TEL. 637 • P.O. BOX 142 KOROR, PALAU 96940

JAN 22 ENTD

22 January 1988

The Honorable Lazarus E. Salii
President, Republic of Palau
Office of the President
P.O. Box 100
Koror, Republic of Palau 96940

Dear Mr. President:

As one of the Plaintiffs in Merep vs. Salii (C.A. No. 129-87), I wish to dispel any misinformation or misunderstanding as to the reasons the Plaintiffs in this case decided to voluntarily dismiss the subject litigation. I understand from the newspapers and from the records of the hearing before the U.S. House of Representatives, Subcommittee on Asian and Pacific Affairs that we, as Plaintiffs in the Merep case, decided to dismiss our case as a result of intimidation through the use of violence and as a result of harrasment by certain employees of the government and other proponents of the Compact of Free Association between Palau and the United States.

Please be assured that my reason for agreeing to dismiss the Merep case was not out of fear for my personal safety, out of intimidation or harrassment. The other Plaintiffs and I in Merep case decided to dismiss our case, because it was our opinion that any further prosecution of the case would no longer be in the best interest of the general public of Palau, and that what we were challenging, based on our suit against the President of the Republic, would become moot come November 1988 general election. Thus, whatever gains the Plaintiffs would have realized if they prevailed in Merep vs. Salii would be lost in less than a year's time. Hence, in our assessment of the situation, it was far better to have the President of the Republic commit himself to consulting traditional chiefs with regard to any use of lands in Palau for U.S. military purposes, than to wait until any constitutional issues become moot in November, 1988.

I trust that your office can assist me and the other Plaintiffs in Merep case to explain the motives of dismissing the case.

Sincerely yours,

Francis Toribiong

OFFICIAL COMMITTEE FILE
PLEASE RETURN

THE STATE UNIVERSITY OF NEW JERSEY
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SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
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FEB 08 1988
WASHINGTON, D.C. 20510

February 4, 1988

Senator J. Bennett Johnston
Committee on Energy and Natural Resources
U.S. Senate
R364 Senate Dirksen Building
Washington, D.C. 20510

Dear Senator Johnston:

Enclosed is a statement concerning the amendment of the Palau Constitution which I should like inserted in the record on S.J. RES 231 concerning the Compact with Palau. I have been writing about the Trust Territory since the early 1970's. Since 1975 I have represented the International League for Human Rights on matters affecting the Trust Territory at the United Nations. In this capacity, I have submitted various petitions concerning the Territory to the Trusteeship Council, the Special Committee on Decolonization, and the Fourth Committee of the General Assembly.

Yours sincerely,

Roger S. Clark
Distinguished Professor of Law

RSC/pam
enclosure

THE STATE UNIVERSITY OF NEW JERSEY
RUTGERS

School of Law-Camden • Fifth and Penn Streets • Camden • New Jersey 08102

4 February 1988

From: Roger S. Clark

Re: Amendment of Palau Constitution. Statement Submitted for the Record on S.J. Res. 231, Senate Committee on Energy and Natural Resources

On 4 August 1987 a referendum took place in Palau which, by virtue of a 73% favorable vote, resulted in a purported amendment to the nuclear control provisions of the Palau Constitution.[1] If valid, the amendment would make possible the approval of the proposed Compact of Free Association with the United States by less than a 75% majority. Subsequently, on 21 August, another referendum was held which resulted in some 73% of the electorate

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[1] The "amendment" read: "Section 1. For purposes of avoiding inconsistencies between the Compact of Free Association and its subsidiary agreements with the United States of America and the Constitution of the Republic of Palau, Article II, Section 3 and Article XIII, Section 6 of the Constitution shall not apply to the Compact of Free Association and its subsidiary agreements during the term of such Compact and agreements; provided, however, Article II, Section 3 and Article XIII, Section 6 of the Constitution shall continue to apply and remain in full force and effect for all other purposes; and provided further that the obligation of the United States under Section 324 of the Compact of Free Association to not use, test, store or dispose of nuclear, toxic chemical, gas or biological weapons intended for use in warfare and other obligations of the United States under the Compact shall continue to apply and remain in full force and effect. Section 2. This amendment shall enter into force and effect immediately upon its adoption."

I believe that the 4 August vote was itself constitutionally deficient and that, accordingly, the 21 August vote was in turn inadequate to approve the Compact. The legality of the 4 August actions was challenged in Merep v. Salii (Supreme Court of Palau, Civil Action No. 139-87) and in Ngirmang v. Salii (Supreme Court of Palau, Civil Action No. 161-87) The controversy surrounding the dismissals in those suits has been addressed elsewhere.[2] This memorandum is addressed to the merits of the constitutional issue, which has not yet been addressed by the Supreme Court of Palau, because of the way in which the suits were withdrawn. It is likely that there will be further litigation on this matter in either the Palau or United States courts.

Since I take the position that both the pleadings in Merep and Ngirmang and the Palauan Government's response on the merits

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[2] See my petition of 15 December 1987 on behalf of the International League for Human Rights to the Trusteeship Council, U.N. Doc. T/PV. 1644 at 7 (1987), and the petition of Sara Rios to the Trusteeship Council on the same date on behalf of the Center for Contitutional Rights, id., 28. We both address the violent acts which we believe led to the withdrawal of the Ngirmang suit. An opinion by Professor Geoffrey Hazard, Jr. of Yale Law School dated 17 November 1987 (generated by Washington attorney, Arnold Leibowitz, Counsel to the Government of Palau) argues that although, as he puts it, "the question is seriously arguable on both sides," the doctrine of claim preclusion has the effect that the litigation on the issue is definitively terminated as a result of the "consent judgment" in Merep. The settlement of Merep included a deal between President Salii and Ibedul Yutaka M. Gibbons, one of the leading opponents of the Compact. My civil procedure friends suggest that there are some holes in Professor Hazard's argument on the law, but I merely pause here to note that it is grounded on absurd anthropological assumptions concerning the role of the Ibedul in Palauan society; see Statement of Gabriela Ngirmang to the Senate Committee on Energy and Natural Resources, 28 January 1988, Hearings on S.J. Res. 231; Mary McGrory, "Arms and the Women," Washington Post, 26 January 1988, p.2.

to those cases miss the central point of the constitutional question, I am setting down my views in some detail.

I must say that I have had some difficulty in being sure from the written materials available to me exactly how the two sides characterize the issues between them, but I think that the next two paragraphs fairly summarize their views.

The plaintiffs in Merep refer to Article XV, Section 11 of the Constitution, which deals with "inconsistencies" between the Compact and the Constitution, and apparently argue that it must be read together with a more general amending provision in the Constitution, Article XIV, which requires referenda on constitutional amendments to be held only at the time of a general election. 1987 was not a general election year, and on this analysis, the vote could not occur before November 1988.[3] This argument collapses the two constitutional amending

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[3] Pleadings in Merep, Count II. In Count I of the pleadings, plaintiffs made another argument based on collapsing the two constitutional provisions, namely that the legislation proposing the referendum was not adopted by the resolution of three fourths of the members of each House of the OEK, as required by Article XIV, Section 1. Article XV does not itself contain any procedure for proposing "inconsistency" constitutional amendments, and it seems sensible to supply the omission via Article XIV. See also note 5, infra. Plaintiffs also had some procedural arguments based on the ways in which the OEK, the Palauan executive, and the Department of the Interior behaved. These appear to involve some factual issues that have not yet been fully developed. I do not address these arguments here, only the constitutional issues. On the plaintiffs' further constitutional argument (sound in my view) that the purported amendment did not deal with an "inconsistency" as that term is used in Article XV, see Section II of this memorandum. Another argument on Article XV, Section 11 which has some support but which was not made by the plaintiffs is mentioned briefly in footnote 23 infra.

procedures into one and relies simply on the failure to follow the procedure this construction of the Constitution would require.

The defendants in Merep and advisers to the Palauan Government, on the other hand, do not accept that the two procedures may be collapsed. They appear to treat the question essentially as one of whether (a) the nuclear control provisions may be amended via Article XV, Section 11 of the Constitution, the "Transition" provision which deals with "inconsistencies" between Compact and Constitution, or whether (b) amendments to those provisions may only be made through the general amending provision of the Constitution, Article XIV. As I understand their argument, Articles XIV and XV provide two different modes of amending the Constitution. Article XV deals with removing inconsistencies with the Compact and thus it, rather than Article XIV, was appropriate to use in the present exercise.[4]

I agree with the plaintiffs that the amendment in question could not be validly made via Article XV. But I get there by a different route. There are serious constitutional problems with

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[4] The most refined version of the arguments appears to be in an "Opinion of Counsel" by Arnold Leibowitz, dated 14 December 1987, addressed to President Salii. See in particular pp. 15-18 of the Opinion discussing the "special importance" of an "expeditious process" and pp. 21-22 ("a specific provision is to be favored over a general provision"). But see the Opinion pp. 18-21 which seems to take the position that either procedure could have been used. (The 14 December Opinion, incidentally, also addresses the claim preclusion issue at pp. 30ff. It incorporates, without attribution, several pages of the Hazard Opinion, supra note 2, and then quotes Professor Hazard in support of its argument.)

the purported amendment - the difficult question is which route to striking it down is most consistent with the constitutional structure. I take the position that the nuclear control provisions cannot be amended by either amending procedure, so-called, (or the single "amending" procedure if the two provisions must be collapsed together). The main difficulty I have with the plaintiffs' argument is that it may not give sufficient weight to the nuclear control provisions in the whole constitutional scheme. Their argument is probably correct,[5] but it is, in the nuclear context,[6] irrelevant to a proper interpretation of the Constitution. As I understand it, neither Article XIV nor Article XV - in combination or otherwise - may be used to amend

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[5] The argument does not involve any violence to the express language of the Constitution - it merely requires, as does my own approach, that different parts of the Constitution be read together. It appears to have some support in the legislative history. It provides a sensible way to deal with the failure of the drafters to lay down a procedure for bringing Article XV, Section 11 into play - the procedures of Article XIV must be followed. The main argument that I have seen made against it is that reading the two provisions together makes Article XV effectively redundant, "meaningless" in the words of the Leibowitz Opinion, supra note 4 at 19. This is not necessarily so. The plaintiffs' position is supported by a 5 September 1986 Opinion of Joseph L. Chairez, Senior Legislative Counsel to the OEK. Chairez refers to the need to read all of the provisions of the Constitution together and to the concern of the drafters of the Constitution that provision be made for amendments conforming the Constitution to the Compact which would merely be limited to that enterprise and would not amend the Constitution for all time. Article XV amendments remain in effect only so long as the inconsistency continues. On this approach, Article XIV amendments (broad, for all purposes) and Article XV amendments (narrow, only for Compact purposes) have distinct roles to play, even though both may be made only at the time of a general election. Viewed this way, there is no redundancy.

[6] In another context, e.g. that of the land use provision in the Constitution, infra note 14, it may be determinative.

the nuclear control provisions.

To put it starkly: the plaintiffs' complaint would apparently accept that the nuclear control provisions may be amended at a general election by a simple majority in three-fourths of the states; the defendants contend that they may be amended at any time by a simple majority in three-fourths of the states to avoid an inconsistency; I contend that they may only be overcome in their own terms - by a 75% majority of the votes cast in a referendum on the issue.

The procedure for a 75% over-ride, as I see it, is the sole means provided in the Constitution for dealing with matters nuclear. Just as the plaintiffs' collapsing argument misses this point, so too is the Government's "either/or" analysis deficient - there is a further factor in the equation, the nuclear control provisions.

The bulk of this memorandum is devoted to my position which is the broad ground upon which I believe a court ought to hold for the unconstitutionality of the attempted amendment. The argument is based to a significant degree on the structure of the Constitution and I have headed the discussion "The High Ground - The Constitutional Structure." In a final section of the memorandum I discuss a narrow basis, also argued by the plaintiffs in Merep, upon which the court could base a decision, should it not want to take the high ground. This is the argument - conclusive, in my view - that there was no "inconsistency" involved. I have headed this section "The Low Ground - No

Inconsistency".[7]

I THE HIGH GROUND - THE CONSTITUTIONAL STRUCTURE

Any analysis of the issue requires that four provisions of the Constitution be read together in their context and woven into a coherent whole.[8] The four provisions are the two nuclear control provisions and the two amending provisions.

i. The nuclear control provisions.

Article II, Section 3 of the Constitution provides that:

> Major governmental powers including but not limited to defense, security, or foreign affairs may be delegated by treaty, compact, or other agreement between the sovereign

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[7] For another "low ground" argument not addressed by the plaintiffs, see infra note 23. Plaintiffs' position shoud perhaps be characterized as the "middle ground."

[8] My approach to the constitution, as to to other legal documents, is that particular provisions must be read in their total context. T. Cooley, I Constitutional Limitations 127-28 says:

> It is therefore a very proper rule of construction, that the whole is to be examined with a view to arriving at the true intention of each part .... The rule applicable here is, that effect is to be given, if possible, to the whole whole instrument, and to every section and clause. If different portions seem to conflict, the courts must harmonize them, if practicable, and must lean in favor of a construction which will render every word operative rather than one which may make some words idle and nugatory.

(8th ed., Carrington ed., 1927) (emphasis in original). To the same effect is 16 Am. Jur. 2d, Constitutional Law, at Section 100. See also Charles Black Jr., Structure and Relationship in Constitutional Law (1969).

> republic of Palau and another sovereign nation, provided such treaty, compact or agreement shall be approved by not less than two-thirds (2/3) of the members of each house of the Olbiil Era Kelulau and by a majority of the votes cast in a nationwide referendum conducted for such purpose, provided, that any such agreement which authorizes use, testing, storage or disposal of nuclear, toxic chemical, gas or biological weapons intended for use in warfare shall require approval of not less than three-fourths (3/4) of the votes cast in such referendum. (Emphasis added.)

Article XIII, Section 6 provides that:

> Harmful substances such as nuclear, chemical, gas or biological weapons intended for use in warfare, nuclear power plants, and waste material therefrom, shall not be used, tested, stored, or disposed of within the territorial jurisdiction of Palau without the express approval of not less than three fourths (3/4) of the votes cast in a referendum submitted on this specific question.

In Gibbons v. Salii (Appeal No. 8-86) the Appellate Division of the Palau Supreme Court held that both of these provisions apply to an international agreement entered into by Palau which falls within the activities and subjects regulated by those provisions. "Specifically," the Court said,[9] "we hold that the four verbs, 'use, test, store or dispose of,' in the nuclear control provisions [of the Constitution] were meant to be a brief summation of all that could possibly be done with nuclear substances -- in short, a general prohibition against the introduction of nuclear substances into Palau."

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[9] Gibbons v. Salii (Supreme Court of Palau, Appellate Division, Appeal No. 8-86) typed opinion at 23.

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In a lengthy discussion of the drafting history,[10] the Court discussed the way in which the drafters first produced what is now Article XIII, Section 6. The United States objected to this provision because it would cause some difficulty to their perceived interests under the Compact. Far from removing the offending language, the Founders proceeded to include comparable language also in a second place in the Constitution, in the draft provision, now Article II Section 3, dealing with approval of the Compact. The Constitution as drafted was accepted by 92% of the voters in 1979 but the Trust Territory High Court held that the (then) Palau District Legislature had validly adopted a statute repealing the empowering legislation for the plebiscite, prior to the vote. A second vote was held in October 1979 on a constitution which removed provisions offensive to the United States. It failed, 70% of the voters being opposed. The provisions were reinserted and substantially the original 1979 constitution was approved in a 78% vote on 9 July 1980.

The determination of the drafters and the voters[11] on this matter and their endeavors to nail the nuclear issue down precisely in the Constitution emerge plainly from the drafting

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10 Id. at 9-16. And see the careful discussion of the drafting history, including newspaper sources, in the Brief of Plaintiffs-Appellees on appeal in Gibbons v. Salii.

11 There is state authority in the the U.S. for the proposition that constitutional provisions should be interpreted in light of what the intelligent voter would think; Matter of Kuhn v. Curran, 61 N.E. 2d 513, 517-18 (N.Y. 1945); Commonwealth ex. rel. Paulinski v. Isaac, 483 Pa. 467, 475, 397 A. 2d 760, 766 (1979).

history and must color construction of the Constitution as a whole. The drafters of the Constitution had a mandate to produce a Constitution which would be compatible with a Compact arrangement with the United States. The voters were not averse to accomodating such an arrangement in the Constitution. But both the drafters and the voters also had another objective in mind - making Palau nuclear free. They did not have in mind a Compact at any cost.

This history is crucial to an understanding of the way in which the various provisions of the Constitution must be read together - in particular so that full effect be given to the nuclear control provisions.

ii The amendment provisions

Article XIV, Section 1, located in a part of the Constitution headed "Amendments," provides that "an amendment" to the Constitution may be proposed by a Constitutional Convention, a popular initiative or by the Olbiil Era Kelulau, under the procedural methods detailed in the section. Section 2 provides that:

> A proposed amendment to this Constitution shall become effective when approved in the next regular general election by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states.

Article XV, Section 11, located in the part of the Constitution labelled "Transition," asserts that:

> Any amendment to this Constitution proposed for the purpose

of avoiding inconsistency with the Compact of Free Association shall require approval by a majority of the votes cast on that amendment and in not less than three-fourths (3/4) of the states. Such amendment shall remain in effect only as long as the inconsistency continues.

iii The Constitution as a whole

As I understand the approach of the Appellate Division in Gibbons v. Salii, it tried to read together the two nuclear control provisions in light of their drafting history. Because of the exigencies of drafting in Convention, the inter-relationships between all of the provisions are not spelt out in detailed cross-references, but they must be construed in connection with one another. The task was complex enough when only the two nuclear control provisions had to be considered; it becomes more complex when the two amending provisions are added. Yet the end result is quite simple. And it is surely what must be done to understand the Constitution as a whole where it is applied to the present effort at amendment.

Consider the following analysis.

The drafters devised three different ways of dealing with constitutional change. In so far as matters nuclear are concerned, they provided in two different sections for a 75% "over-ride"[12] as the mode to take care of the matter. Barring

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12 I have used the term "over-ride" in this context in the past and and Justice Gibson used it with apparent approval in the Trial Division in Gibbons v. Salii. The point about an over-ride (if that approach be used) is that the constitutional provision still remains in place; it is merely trumped for the time being by the situation approved by the 75% majority in the relevant

the exercise of the power of the people to over-ride by means of the 75% procedure, the provisions stand. I am not sure how best to articulate the point about the exclusivity of the supermajority procedure in matters nuclear. One can perhaps say that the nuclear control provisions are simply not "amendable" - they may only be "over-ridden" - the Constitution itself lays down the procedure for changing these rules. Or one can instead say that the 75% provisions in the nuclear control provisions are best viewed as an "amending" procedure. Seen this way the nuclear control provisions permit "amendment" by their own terms. If the 75% majority is found, then the provisions are modified to the extent voted upon in the relevant referendum. Otherwise, they are not subject to amendment.

We are then left with the two amendment procedures (so-labelled) in Article XIV and XV to deal with all changes to the Constitution other than those dealing with nuclear issues. The Article XIV procedure is broader in the scope of its potential subject-matter; it might conceivably be used to effect alterations on any matter other than a nuclear one. Article XV is narrower in the scope of its subject-matter. It may only be

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referendum. The Constitution revives to its full extent if the situation approved by the voters ceases to exist - if, e.g., the Compact is terminated or amended in an appopriate fashion, say following the miracle of worldwide nuclear disarmament. Article XV, Section 11 may also be regarded as an "over-ride" provision in that an "amendment" made under it is to "remain in effect only as long as the inconsistency continues."

used for "avoiding inconsistency" [13] and it is effective only so long as the inconsistency continues.

It is, indeed, conceivable that there are some cases in which a Court would uphold an amendment whichever of the two ways it was adopted, although this is certainly debateable. It might be possible to simply repeal the relevant provision completely under Article XIV. Or it might be possible to deal with it as an inconsistency and put it aside to the extent of the inconsistency, i.e., in so far as it affects the United States for Compact purposes, but not in respect of other countries. An amendment would need different drafting depending upon which section was being utilized. But it is at least imaginable - but not open and shut - that the drafters left open the possibility of some overlap between Article XIV and XV.

On the other hand, the drafters were so specific in their references to voting on the nuclear issue - not just in one, but in two provisions of the Constitution - that the maxim generalis specialibus non derogant must apply as between the nuclear control provisions and the two "amending" provisions. The references to the 75% procedure for over-riding the nuclear control provisions are so specific that they must be read as not being subject to either of the more general amending provisions.

The Leibowitz Opinion of 14 December gives unwitting support

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[13] The drafters could probably have foreseen plenty of potential fields of inconsistency between Compact and Constitution, other than nuclear issues, which might ultimately require some compromise - the power of eminent domain and Palau's law of the sea archipelagic claims, for example.

to this part of the argument. Mr Leibowitz argues[14] that "[t]here is an overriding judicial policy of constitutional construction to apply a specific provision as opposed to a more general one when they both address the same subject." Exactly. But the Opinion seeks to apply the principle as between Article XIV and XV, in an imaginary world where those two provisions stand alone. In the real world of the real Palau Constitution, Articles XIV and XV stand alongside the nuclear control provisions. The nuclear control provisions are the specific ones - not Article XV. Their very specificity takes their subject-matter out of the more general provisions.[15]

One response to the argument that I have made is to contend that interpreting the Constitution as I suggest in some way derogates either from the sovereignty of the people of Palau or from the sovereignty of Palau itself, since it would then not be possible to "amend" the Constitution.[16] There are some

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[14] Leibowitz Opinion, supra note 4 at 21.

[15] The best argument that I can think of to counter the one I have suggested is that the Constitution contains no provision (such as is contained in some constitutions) stating which provisions may, or may not, be the subject of amendment, and that Article XIV speaks of "a proposed amendment" and Article XV speaks of "any" amendment "proposed for the purpose of avoiding inconsistency." It might, therefore, be thought that the power to amend extends to any or all other provisions of the Constitution. I would respond that the inference to be drawn from the specificity of the nuclear control provisions is so strong that it overcomes any weak indications that the language itself contains.

[16] See, e.g., the argument in the Leibowitz Opinion, supra note 4 at 13 that "the power of the people to change their constitution is plenary."

convincing answers to this.

In the first place, the notion of including provisions in a Constitution of a sovereign independent state that are not subject to amendment at all, is hardly a novel idea.[17]

But there is no need to go so far - the Palauan nuclear ban is not immutable; it may be modified in its own terms, by a 75% majority. The people of Palau retain the sovereignty to change their mind; they have merely laid down the conditions under which such a change may be manifested. Laying down a particular procedure is not a derogation of sovereignty.[18]

There is, indeed, persuasive authority on the point. In

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[17] The idea is at least as old as the grandfather of written consitutions, that of the United States. Article V of that document prohibited any amendments to certain parts of Article 1, notably that preserving the slave trade, prior to 1808. And see generally, L. Orfield, The Amending of the Federal Constitution 83-87 (1942); Vile, "Limitations on the Constitutional Amending Process," 2 Constitutional Commentary 373 (1985). The Independence Constitution of what was then known as Ceylon (now Sri Lanka) was interpreted by the final appellate court for Ceylon, the Judicial Committeee of the Privy Council, as containing some provisions, such as those on freedom of religion, that were not subject to amendment even by the extraordinary legislative procedures by which most other parts of the Constitution might be amended. See Bribery Commissioner v. Ranasinghe [1965] Appeal Cases 172, excerpted in Blaustein, Clark & Sigler, Human Rights Sourcebook 875, 877 (1987). It may be that an "unamendable" provision can ultimately be removed by the people in constitutional convention producing a new document - like the United States replacement for the Articles of Confederation. The Ceylon Constitution was eventually replaced in that way. But it could not be replaced by the regular amending process.

[18] And the "universal rule ... is that constitutions should never be amended or disregarded either by public officials (including courts) or private individuals, except in the manner pointed out in the constitution itself, since its provisions are always mandatory and never directory." Arnett v. Sullivan, 279 Ky 720, 727; 132 S.W. 2d 76 (1939) (citing numerous authorities).

Harris v. Donges, Minister of the Interior,[19] the Appellate Division of the Supreme Court of South Africa was faced with a challenge to the validity of an act of Parliament. The Act purported to amend the Constitution so as to restrict the franchise by removing the voting power of the group known as the Cape Coloureds. It had been passed in the normal legislative mode by a majority of both Houses of the South African Parliament. But the Constitution said that such amendments required a two-thirds vote of both Houses sitting in a joint session. The Court held that the amendment was invalid. It said:[20] "A State can be unquestionably sovereign although it has no legislature which is completely sovereign. As Bryce points out in his Studies in History and Jurisprudence (1901 ed., vol. II, p. 53), legal sovereignty may be divided between two authorities.[21] In the case of the Union, legal sovereignty is or may be divided between Parliament as ordinarily constituted and Parliament as constituted under section 63 and the proviso to

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19 [1951] 1 Times Law Reports 1245.

20 [1951] 1 Times Law Reports at 1259.

21 [Note by R.S.C.] The reference in the reports of Harris to p. 53 is in error. The correct reference is evidently to pp. 539-40 of Viscount Bryce's book. Bryce's examples of the division of sovereignty point are the Autro-Hungarian Empire after 1867 and the way in which amendments to the U.S. Constitution are normally made under Article V - a three-fourths majority of states - compared with the way in which equal representation of the States in the Senate may not be amended without the consent of the state or states affected. If it is appropriate to talk about a sovereign in the two instances in the U.S. Constitution, then the sovereign is a different one - or at least speaks in a different manner - in each case.

section 152 [both Houses sitting jointly]. Such a division of legislative powers is no derogation from the sovereignty of the Union...." The same comment is entirely apt to the Constitution of Palau as I believe it ought to be interpreted. Legal sovereignty is divided. On some subjects the OEK may pass laws by the ordinary legislative process; on some matters, amendments may be made by action of the OEK accompanied by a 50% plus one majority in three-fourths of the states; on matters nuclear, the sovereign people must speak by a 75% majority.[22]

iv To recapitulate

The whole structure of the Constitution, read in the light

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[22] And note the comment to the same effect in Ranasinghe, supra note 17, Blaustein, Clark & Sigler at 879:

> No question of sovereignty arises. A Parliament does not cease to be sovereign whenever its component members fail to produce among themselves a requisite majority, e.g., when in the case of ordinary legislation the voting is evenly divided or when in the case of legislation to amend the Constitution there is only a bare majority when the Constitution requires something more. The minority are entitled under the Constitution of Ceylon to have no amendment of it which is not passed by a two-thirds majority. The limitation thus imposed on some lesser majority of members does not limit the sovereign powers of Parliament itself which can always, whenever it chooses, pass the amendment with the requisite majority. (My emphasis.)

The same is true in Palau; the minority is entitled not to have nuclear materials absent a 75% majority.

of the determination of the drafters to deal very specifically with matters nuclear, suggests that the "amending" provisions must be read subject to the very specific nuclear control provisions and that the amending provisions (so-labelled) in the Constitution simply do not apply to the nuclear control provisions. Those provisions contain their own mode of change. A sole mode of change. A 75% majority.

II THE LOW GROUND - NO INCONSISTENCY

At the very least, I am certain that the Court could decide the case on the narrow ground, alleged in amended Count V of the Merep pleadings, that the Constitutional "amendment" did not deal with an "inconsistency" with the Constitution, as that term is used in Article XV.[23]

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[23] There is one other argument based on the meaning of Article XV, Section 11, that might have been made in the plaintiffs' pleadings but was not. It is contained in a widely circulated memorandum from Daniel Hill Zafren of the Congressional Research Service of the Library of Congress to the House Committee on Interior and Insular Affairs, dated 21 July 1987. This argument is that "proposed amendments that might fall within Article XV, Section 11 are limited in nature and for the specific purpose of conforming the Constitution to a Compact of Free Association already (or perhaps contemporaneously) approved by the electorate in a referendum." It does not, that is, permit amendments to conform the Constitution to a Compact which has not yet been approved. Zafren finds support for this in the legislative history and in a 1986 Opinion by the then Attorney-General of Palau who asserted that "Article XV, Section 11 refers to the Compact of Free Association. It does not refer to a 'proposed' Compact of Free Association. The language most clearly indicates that the inconsistency contemplated is between present, not proposed, documents." (Emphasis added.) The Opinion in question, by Russell Weller, is reprinted in Hearings

If the Court were to accept the structural argument I make in the preceding section, it need not reach this argument. It would simply say that the amending provisions do not apply to either of the nuclear control provisions, period. If it does not go that far, it would surely accept the proposition that Article II, Section 3 of the Constitution deals with the approval of a Compact. Changing the rules pertaining to approval is not removing an inconsistency! This would be to torture the meaning of inconsistency beyond anything that it would bear. There is, indeed, no inconsistency - the Constitution in its own terms provides a method, a 75% majority, for achieving such an approval. The Compact says that there shall be nuclear substances. The Constitution says that there shall not be nuclear substances unless its procedures are followed. It would, of course, be different if the Constitution merely banned nuclear substances. Then there would be a contradiction between Compact and Constitution and the inconsistency would be ripe for removal. But this is not what the Constitution does. There is nothing

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Before the Subcomm. on Public Lands of the House Comm. on Interior and Insular Affairs on the Compact of Free Association, Vol. IV, 146, 150 (Ser. No. 99-9). The placement of Article XV, Section 11 along with other provisions relating to "transition" perhaps does not have much weight. But it might suggest that "transitional" amendments would no longer be possible at the other end, when the Compact is fully in place and the Trusteeship terminated. The Leibowitz Opinion, supra note 4 at 17, appears to concede this limitation on the force of the Section 11 procedure, but does not, of course, accept (or even mention) the Congressional Research Service argument. In short, it may be that Article XV, Section 11 is of very limited temporal import; it may only apply during the transition period between approval of the Compact and termination of the Trusteeship by the United Nations Security Council.

inconsistent about a prescribed procedure, even if it is politically difficult to achieve. The founders meant that it would be difficult![24]

It will be noted that there are two possible variants of this argument. The narrow version would rely on Article II, Section 3 and its specific reference to approving a compact or agreement. The Constitution deals with approval; the "amendment" deals with inconsistencies. The "amendment" fails to deal with the problem, which is that the Government is unable to deliver a

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24 The American Heritage Dictionary defines "inconsistent" as "Not consistent, especially: a. erratic, b. incongruous, c. contradictory, d. illogical." "Contradictory" is probably the nearest synonym to "inconsistent" as used in the Constitution. It might just be possible to say as a matter of standard usage that the Compact and the nuclear prohibition considered out of its context are inconsistent. But when the procedure for approval, a substantial part of the context, is added, the inconsistency disappears - the procedure provides the escape-hatch for any conflict. (The Leibowitz Opinion, supra note 4 at 4, asserts that the Court "held" in Gibbons v. Salii that the Compact "was inconsistent with [the nuclear control sections]." The legislature makes a similar assertion in RPPL 2-30, the empowering legislation for the August referenda. If the suggestion is that the Court found the predicate for applying the inconsistency provision of the Constitution, this is not at all what the Court did. I cannot find any language in the decision either of Justice Gibson at trial or the Appellate Division on appeal where the Court used the word "inconsistent" to describe the conflict between the nuclear prohibition and the Compact. It is not surprising that this should be so. The Court was, after all, not addressing the issue of amendment under Article XV. It was addressing the issue of whether the Compact came within the scope of the constitutional ban, and its remarks were directed to that. Nevertheless, the Appellate Division recapitulated its argument at p. 23 with the comment that: "In sum, we hold that the Republic of Palau may not enter into an international agreement permitting these 'use' and 'store' operations without first obtaining 75% voter approval under both nuclear control provisions." If anything, this language supports my interpretation of the situation - there is no "inconsistency", the nuclear provisions merely require a supermajority.)

75% majority, not that there is an inconsistency.[25] On this approach, it might be possible to distinguish Article XIII, Section 6 as applying say, to the policy on nuclear substances generally, rather than approval of a Compact specifically. This narrow version could distinguish between amending Article II, Section 3 (procedure for Compact, not alterable as an "inconsistency") and Article XIII, Section 6 (nuclear prohibition, an "inconsistency" and thus amendable).

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25 Perhaps one ought to analyse Article II, Section 3 another way. It really deals with three things: 1. the power of Palau to delegate major governmental powers; 2. a general procedure for doing so; 3. a specific procedure for doing so in cases involving nuclear activities (which incorporates a nuclear prohibition). The August 1987 attempt at amendment would seek to throw out the baby with the bathwater. It says that "Article II, Section 3 ... shall not apply to the Compact...." The words "Article II, Section 3" are quite general. On its face, therefore, the "amendment" removes the power to delegate as well as both procedures, including the nuclear prohibition. Presumably this is not what the drafters of the referendum legislation had in mind, but exactly what they intended to do is not so clear. Sloppy drafting has marked several of the referenda in Palau since 1983. See Boss, Clark, Hammerich, Roff and Wright, Report of the International Observer Mission Palau Referendum December, 1986 11-13 (1987). The Leibowitz Opinion, supra note 4, at 27, adds to the confusion. It says: "It could be argued that the constitutional amendment was directed only at an elimination of the 75 percent voter approval requirement of the Palau Constitution to pass the Compact. But the amendment does more than that. If, for example, the legislation had just reduced the requirement for approval of the Compact from 75 percent to 51 percent, the Constitutional provisions -- Article II, Section 3, and Article XIII, Section 6 -- would still apply to the Compact. The inconsistencies pointed out in Gibbons v. Salii between the Compact and the Constitution would still be present. The Legislature chose not to do that. It specifically removed the applicability of Article II, Section 3, and Article XIII, Section 6, in relationship to the Compact, thus removing the inconsistencies set forth in Gibbons v. Salii. Indeed, the OEK method was the only method by which the inconsistency could be removed." If the amendment goes this far, why does it not overcome the power to delegate also?

The broad version of the argument, which seems more persausive, would assert, applying Gibbons v. Salii,[26] that both Article II, Section 3 and Article XIII, Section 6 apply to "approval" in a broad sense of matters nuclear, including activities pursuant to a Compact, and do not represent any inconsistency. Article XIII, Section 6 may not refer specifically to approval of a Compact, but the Compact is the kind of deal that comes within its purview. The two nuclear control provisions merely provide a way to approve nuclear use and if their procedure is followed there is no inconsistency.

The narrow version of this argument - that the inconsistency provision permits amendment of one but not both nuclear control provisions - could perhaps lead to the anomalous result that an amendment - by the 50% procedure in three-fourths of the states - might be possible to Article XIII, Section 6, which bans power plants, but not to Article II, Section 3 which bans nuclear weapons. This anomaly is removed if both nuclear control provisions are interpreted as I suggest, as "approval provisions."

III CONCLUSION

Such anomalies are avoided, a fortiori, if one takes the

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[26] In particular the Court's comment, supra note 24, that "... the Republic of Palau may not enter into an international agreement permitting these 'use' and 'store' operations without first obtaining 75% voter approval under both nuclear control provisions."

high ground which I argued in the earlier part of this memorandum. The nuclear control provisions read together provide the sole mode for approving Compacts or any other arrangements dealing with matters nuclear. No other approval procedure, whether at a general election or otherwise, will do - only a 75% majority meets the constitutional mandate. It would be strange to think that the drafters of the Palau Constitution devised a special procedure for dealing with matters nuclear and then left it open to removal by the regular amending process. Reading the Constitution as a whole demonstrates rather clearly that they did nothing of the kind.

This, I believe, is what the drafters and the voters who ratified the Constitution had in mind.

WRITTEN SUBMISSION OF SARA RIOS ON BEHALF OF
THE CENTER FOR CONSTITUTIONAL RIGHTS

Initially, we take this opportunity to thank Senator Johnston and other members of this committee for giving us the opportunity to present this written statement. Having had a representative present at the hearing, the Center for Constitutional Rights is sensitive to the Committee's concerns and will attempt to respond to those concerns in this testimony. This statement is being submitted on behalf of the Center for Constitutional Rights by Sara E. Rios.

The Center for Constitutional Rights is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights.

In 1986, the Center for Constitutional Rights successfully represented Palauan plaintiffs in a suit in defense of Palau's Constitution. That suit, denominated Gibbons v. Salii, resulted in, among other significant holdings, a holding that the proposed Compact of Free Association between the United States and Palau was in direct conflict with Palau's Constitution in that the Compact provided for the use and storage of nuclear substances in Palau. This being the case, Palau's highest court ruled that the proposed Compact could not be constitutionally ratified by Palau unless it garnered at least 75% of the popular votes cast in a referendum to consider ratification of the Compact.

The Center for Constitutional Rights has presented testimony before the U.N. Trusteeship Council and before the Fourth Committee (on Decolonization) of the United Nations General Assembly regarding the 1986 litigation and also regarding the current climate of violence which seriously threatens the rule of law in Palau.

With regard to the current situation, in early September 1987, the plaintiffs in Ngirmang v. Salii requested that we assist them in preparing a memorandum in opposition to a motion to dismiss which was served on them shortly after they filed their case. After the suit was withdrawn several of the plaintiffs in Ngirmang v. Salii have continued to confer with the Center for Constitutional Rights regarding their desire to refile the withdrawn suit. These former plaintiffs have requested that CCR continue to research and draft documents in preparation for the refiling of the case. The former plaintiffs have recently officially requested that the Center for Constitutional Rights represent them in the new suit. Although CCR has agreed to do so, it is still not posssible to make predictions regarding precisely when the suit will be refiled. It is possible to say, however, that the former plaintiffs are firmly committed to refiling the suit and that it will be refiled.

In this statement we seek to persuade this Committee that no further action should be taken on the COFA until the constitutionality of the August 1987 amendment and of the purported ratification of the Compact of Free Association has been

determined by Palau's courts. Toward that end, we seek to identify for this Committee two particularly critical areas for careful and searching inquiry in your consideration of the proposed Compact of Free Association between the United States and the Republic of Palau: (1) Whether the proposed Compact has been approved in Palau "in accordance with its constitutional processes," as provided in Sec. 411 of the Compact. (2) Whether the violence and intimidation surrounding the most recent Compact-related votes, in August 1987, require this Committee, and the Congress as a whole, to conclude that the conditions stated in Sec. 101(d) of P.L. 99-658 have not been met. We are particularly concerned about the incidents of violence and intimidation directed at lawyers and litigants who attempted to use the Palau courts to secure authoritative rulings on the adequacy of the referenda of August 4, 1987, on a proposed constitutional amendment, and August 21, 1987, on the proposed Compact. It is also of great concern to us that even the Chief Justice of Palau's highest court is not immune from threats and intimidation, which culminated in his recusal from consideration of cases challenging the constitutionality of the proported amendment and subsequent to a vote on the Compact of Free Association.

I. COMPACT RATIFICATION

In Gibbons v. Salii, Appeal No. 8-86 (1986), the Appellate Division of the Palau Supreme Court held that the February 1986 vote in which the proposed Compact of Free Association received a

72% affirmative vote had not resulted in the ratification of the proposed Compact in Palau. The Compact reserved to the Untied States and allied nations rights to "use, test, store or dispose of" nuclear materials by use of nuclear-powered and/or nuclear-capable vessels and facilities, and thus required a 75% affirmative vote for ratification, pursuant to Art. II, Sec. 3 and Art. XIII, Sec. 6 of the Palau Constitution. (Attachments A and B).

a. The Constitution was not validly amended in August 1987

In the August 21 referendum, the proposed Compact received an affirmative vote of approximately 73%. It thus failed to attain the 75% ratification[1], unless the August 4 referendum was effective in amending the constitution to eliminate the requirement of 75% approval. The argument that the August 4 referendum did not validly amend the Palau Constitution is so strong that this Committee is obligated not to rely on the Palau Administration's representations to the contrary, and should make an independent assessment of the constitutional issues.

The general process for amending the Palau Constitution is set out in Art. XIV. (Attachment C). For an amendment proposed initially in the Olbiil Era Kelulau ("OEK"), approval by three-fourths of the members of each house is required to send the proposed amendment to a vote at the next general election. It then must receive a majority of all votes cast, as well as a

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[1]The proposed Compact has remained the same in all relevant particulars since the version voted on in February 1986 and the subject of the ruling in Gibbons v. Salii.

majority in at least three-fourths of the states.

The proposed amendment was not validly presented for a vote on August 4, 1987. The proposed Compact, therefore, was not approved in the August 21 referendum. Four points are most relevant to this conclusion.

1. August 4, 1987 was not the date of a general election. On that date, only a special referendum, called exclusively to vote on the proposed amendment, was held. As noted in a Congressional Research Service report dated July 21, 1987, this is not a valid method of presenting a proposed constitutional amendment for approval. (Attachment D).

2. Moreover, the proposed amendment did not receive the requisite approval in the OEK. The plain words of the constitution (Attachment E) require that three-fourths of the entire membership of each chamber must approve the proposal. The bill that became RPPL 2-30 received only eleven affirmative votes in the 16-member House; only ten in the 14-member Senate. These votes were, respectively, 69% and 71% of the total membership of each house.[2] Neither attained 75%.

3. Because the proposed amendment was not in fact approved by the OEK under Art. XIV, and was not submitted at the next general election, it never should have been voted on. Confusion on this point has, however, been generated by the Palau Administration's invocation of Art. XV, Sec. 11 of the Palau

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[2]The bill was actually voted on twice in the House of Delegates. On the second vote, taken on the bill as amended by the Senate, only nine affirmative votes (56%) were cast.

Constitution (Attachment F). This section addresses the consequences of an amendment to the Constitution adopted "for the purpose of avoiding inconsistency with the Compact of Free Association." The section is designed to assure that any "inconsistency" amendment will expire with the expiration of the inconsistency, and not be a permanent change to the constitution. This section is not an independent mechanism for proposing amendments. This is clear from its lack of any method by which a proposed amendment can be first initiated and then presented to the population for a vote. Article XIV is very specific with regard to how a proposed amendment can be initiated, i.e. by way of a Constitutional Convention, by popular initiative in the form of a petition signed by at least 25% of the registered voters, or by a 3/4 vote of the OEK, and then presented to the population at the next general election. Article XV, Sec. 11, on the other hand, is grossly lacking in specificity of methodology. Nothing in Art. XV, Sec. 11 suggests that an "inconsistency" amendment can be adopted in any way other than that set out in Art. XIV. In sum, since the Art. XIV requisites have not been met, the amendment could not have been validly adopted, regardless of the motive ("inconsistency") for proposing it.[3]

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[3]In a memorandum dated February 19, 1987 from Howard Hills to James Berg, Lt. Hills explores possible arguments that could be advanced in support of the view that an "inconsistency" amendment could be voted on at a time other than the next general election. These arguments are not persuasive. More important, they are irrelevant. As shown above, the proposed amendment was not validly approved by the OEK. As noted below, the "inconsistency" provisions of Art. XV, Sec. 11, if they have any procedural significance at all, do not apply to the amendment proposed by

4. Independent of the Art. XIV requirements, Art. XV, Sec. 11 does not serve to save the proposed amendment. There is in fact no inconsistency between the proposed Compact and Art. II, Sec. 3 and Art. XIII, Sec. 6 as they stood on August 3, 1987. Any special "inconsistency amendment" procedure, in the event that one could be found in the Constitution, is simply irrelevant.

First, the language of Art. XV, Sec. 11 refers to "the Compact of Free Association," not to "a proposed Compact of Free Association." The Compact does not have any juridical existence in Palau until--at the least--it has been ratified there. Nothing can be inconsistent with the Compact in its current inchoate state, which is as a proposal awaiting adoption by the people of Palau.

Second, Art. II, Sec. 3 and Art. XIII, Sec. 6 (the "harmful substances ban") provide in themselves the express and exclusive means of reconciling any substantive differences between the powers granted to the United States by the proposed Compact and the harmful substances ban in the Constitution. Indeed, the proposed Compact incorporates these provisions, as they stood prior to August 4, 1987, into its Sec. 411. (Attachment G). The mechanism contemplated by Sec. 411 is exactly the mechanism in the constitution at the time the proposed Compact was signed in January 1986. This is how it works: <u>If</u> the Compact proposes to give the United States powers that conflict with the ban of harmful substances, <u>then</u> it can not be accepted in Palau <u>unless</u>

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means of RPPL 2-30.

75% of the voters vote affirmatively to approve it when asked to do so in "a referendum submitted on this specific question." Art. XIII, Sec. 6; see also, Gibbons v. Salii, slip op. at 23. (Attachment H.)

This mechanism, far from creating a conflict between the proposed Compact and the harmful substances ban, is intended to reconcile such a conflict, if the requisite percentage of Palau voters want to do so. If they do not, then the Compact simply is not ratified.[4] As the drafters of Sec. 411 of the proposed Compact recognized, the Palau constitutional approval process accommodates the Compact through the 75% requirement. The 75% requirement is an integral part of the harmful substances ban. This removes any possible claim that the ban is inconsistent (for purposes of Art. XV, Sec. 11) with the proposed Compact, which expressly incorporated the 75% approval process in its Sec. 411.

b. The Compact referendum should not have been held

RPPL 2-30, signed into law on July 19, 1987, authorized both the August 4 vote on the constitutional amendment and the August 21 vote on the proposed Compact. (Attachment I). However, Sec. 3 of the law made the August 21 Compact vote contingent on the

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[4]This is the meaning of the Gibbons v. Salii holding that the proposed Compact authorizes what the harmful substances ban forbids: the ability of the United States and its allies to "use, test, store or dispose of" harmful substances within the jurisdiction of Palau. However, as the decision makes clear, the consequence of this "inconsistency" is simply to call into play the counting rule established in the harmful substances sections: only 75% approval can create an exception, for the specific purpose presented to the voters. See Gibbons v. Salii, slip op. at 16-23.

ratification of the proposed constitutional amendment. As has been demonstrated above, the proposed amendment was clearly not ratified. The August 21 vote is, therefore, a nullity.

Perhaps recognizing that the Compact referendum could not be supported by RPPL 2-30, on August 12, President Salii issued Executive Order 60. (Attachment J). This document purports to authorize the Compact referendum. The President of Palau, however, lacks the power to issue such an order.

The concept of a presidentially-ordered Compact referendum is antithetical to the Compact approval process set out in Art. II, Sec. 3 of the constitution. Before any proposed Compact can be sent to the people for a vote, it must be approved by not less than two-thirds of the members of each house of the OEK. If the president can, by Executive Order, establish and hold a referendum, there is no way to assure that the proper OEK approval of the text of the Compact has been secured prior to this submission for a popular vote. This subversion of the express constitutional method for Compact approval can not be a part of the general powers of the president preserved in Art. VIII, Sec. 7 of the constitution.

Moreover, the Compact referendum clearly required the expenditure of substantial sums of money, for the printing, distribution, collection, and counting of ballots, and the establishment and maintenance of polling places. The president, however, can "spend money" only "pursuant to appropriations" made by the OEK. Art. VIII, Sec. 7(6). The President can not by

Executive Order undertake to spend money as a substitute for OEK action.

The Compact vote is thus revealed as a nullity, for three distinct reasons. First, the Compact did not receive the necessary 75% approval still required because the August 4 vote was not effective in amending the constitution. Second, the Compact referendum was not authorized by RPPL 2-30, because that referendum was conditioned on the ratification of the proposed constitutional amendment, which did not occur. Third, the Compact referendum was actually held under the purported authority of an Executive Order, but the Executive Order was ultra vires and void.

II. VIOLENCE AND INTIMIDATION

All of the points outlined above were raised in litigation filed in Palau in August 1987, in the case of Ngirmang, et al. v. Salii, et al., Civil Action No. 161-87. These claims have not yet been adjudicated in the courts of Palau because that case was withdrawn under circumstances of the most intense intimidation and lawlessness. The trial judge noted that the allegedly voluntary withdrawal gave strong indications that it was not, in fact, voluntary. (Attachment K).[5] The case was withdrawn on the date of the scheduled hearing on the defendants' motion to dismiss--less than a day after the father of one of the plaintiffs had been shot dead and the home of another plaintiff had been the target of

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[5]The document filed by two plaintiffs referred to at page 2 of the judge's memorandum is attached as Attachment L. It clearly shows the intention of at least some of the plaintiffs in that case to continue to pursue it.

arson.

The murdered man was also the father of the Palauan lawyer who had represented the plaintiffs in Gibbons v. Salii and who had continued to counsel individuals interested in bringing legal challenges to the three subsequent attempts to secure approval of the Compact. The murderous attack consisted of shots fired through the windows of the attorney's office, striking and killing his father who was inside the office. There are strong suspicions that the bullets were intended for the attorney, Roman Bedor, as he is an active representative of Palauans working in defense of Palau's Constitution.

It is difficult to conceive of a more direct form of intimidation of litigants and their attorneys than this. The intimidation of attorneys and litigants, especially those representing views contrary to those held by the "powers that be," has long been condemned by U.S. courts. See U.S. v. Price, 409 U.S. 1040 (1966). Violence directed at Black citizens trying to exercise their rights in court and at the ballot box was one of the principal evils at which the Ku Klux Acts, 42 U.S.C.S. §1985, were directed.

In spite of this extreme intimidation, many of the plaintiffs in Ngirmang v. Salii wish to continue their challenge to the amendment of Palau's Constitution and the subsequent Compact vote as soon as they can do so without endangering their lives. Evidence of this fact can initially be found in a document prepared by the plaintiffs after the murder and firebombing and

which they filed with the court on September 8, 1987. (Attachment N). Careful examination of the document demonstrates that it was not the women's desire to withdraw their suit but rather, that they intended only to postpone it until it became safer for them to pursue it. The wording of this document demonstrates the plaintiffs' willingness to continue the suit at whatever time it may be safe for them to do so. Indeed, we have been instructed by the plaintiffs to continue preparation of the suit challenging the constitutional amendment process and subsequent plebiscite in the event they deem it safe to refile in the future.

It has been very distressing and insulting to the former plaintiffs, victims of the previously described intimidation, that there is any remaining doubt regarding whether or not there truly was any intimidation directed at those challenging the constitutional amendment process. Any such doubts can be extinguished by reference to the U.S. government's own documents. Documents secured through Freedom of Information Act requests reveal that the agencies of the U.S. government were aware of the extent of the violence inn great detail as early as September 12, 1987. (ATTACHMENT L) Additionally, other documents secured through a FOIA request make it abundantly clear that agencies of the U.S. government knew that the violence and intimidation were related to the filing of a law suit challenging the constitutional amendment. (ATTACHMENT M)

To provide further evidence of the current climate of unrest, C.C.R. has gathered anonymous affidavits from Palauan citizens

with direct and/or indirect knowledge of intimidation directed against Constitution supporters; some affiants were plaintiffs in Ngirmang v. Salii, some were not. In the affidavits the affiants express their desire to legally challenge the August 1987 referenda, but also their reluctance to do so in a climate of fear, intimidation and threats. The affidavits were given under assumed names because the affiants were afraid that if they identified themselves they or their families might be harmed. The affidavits demonstrate that were it not for fear of physical harm Palauans would exercise their absolute right to challenge the amendment of Palau's constitution and the subsequent plebiscite which took place under its authority. All affidavits have been submitted to Reps. Morris Udall and Ron DeLugo of the House Committee on Interior and Insular Affairs.

It is incumbent on this Committee not to accept or tolerate actions that are so clearly condemned by statute and case law, simply because they have been perpetrated on people half a world away. The obligation of the United States under its Trusteeship Agreement with the United Nations simply does not allow for the second-class treatment of the people of Palau, especially with regard to their access to the courts and other legitimate means for the redress of grievances.

This Committee should not recommend that the conditions of Sec. 101(d) of P.L. 99-658 have been fulfilled until it is completely satisfied that all avenues of legal review in Palau have been exhausted. A necessary prerequisite to that

satisfaction is the knowledge that citizens who want to seek judicial review of the August 1987 referenda can do so, without fearing for their lives and the lives of their families. We urge this Committee to do everything in its power to assure that the rule of law is reestablished in Palau, and that citizens exercising their rights through the judicial system are adequately protected from coercion and vigilante attacks.

Thank you.

Note: Attachments are available for review from Committee files.